

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3 1:16-cv-01038

4 ARIANA QAYUMI)
5)
6)

7 Plaintiff,)
8)
9)

10 VS.)
11)
12)

13 DUKE UNIVERSITY,)
14)
15)

16 Defendant.)
17)
18)

19
20 DEPOSITION OF ELI KOZIN
21

22 At Durham, North Carolina
23 June 19, 2017

24 9:36 a.m.

25 Reported by: Leslie Christian

<p>1 A P P E A R A N C E S:</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Robert C. Ekstrand, Esquire</p> <p>4 EKSTRAND & EKSTRAND, LLP</p> <p>5 110 Swift Avenue, Second Floor</p> <p>6 Durham, North Carolina 27705</p> <p>7 (919)416-4590</p> <p>8 rce@ninthstreetlaw.com</p> <p>9</p> <p>10 FOR THE DEFENDANT:</p> <p>11 Christopher W. Jackson, Esquire</p> <p>12 ELLIS & WINTERS, LLP</p> <p>13 300 North Greene Street, Suite 800</p> <p>14 Greensboro, North Carolina 27401</p> <p>15 (336)389-5686</p> <p>16 chris.jackson@elliswinters.com</p> <p>17 FOR ELI KOZIN:</p> <p>18 Glen D. Bachman, Esquire</p> <p>19 BACHMAN & SWANSON, PLLC</p> <p>20 1402 Broad Street</p> <p>21 Durham, North Carolina 27705</p> <p>22 (919)286-1061</p> <p>23 gdb@bachmanswanson.com</p> <p>24</p> <p>25</p>	<p>Page 2</p>	<p>1 T A B L E O F C O N T E N T S</p> <p>2 EXAMINATIONS - ATTORNEY PAGE</p> <p>3 Direct - Mr. Jackson 4</p> <p>4 Cross - Mr. Bachman 91</p> <p>5 Recross - Mr. Ekstrand 91</p> <p>6 Redirect - Mr. Jackson 113</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NO. DESCRIPTION PAGE</p> <p>10 Exhibit 19 Subpoena 14</p> <p>11 Exhibit 20 Text messages 39</p> <p>12 Exhibit 21 Declaration of Eli Kozin 65</p> <p>13 Exhibit 22 E-mail exchanges 71</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p>
<p>1 S T I P U L A T I O N S</p> <p>2 I, Leslie Christian, being a court reporter</p> <p>3 and a Notary Public in and for the state of North</p> <p>4 Carolina, was appointed commissioner by consent to</p> <p>5 record the deposition of ELI KOZIN, on June 19, 2017</p> <p>6 beginning at 9:36 a.m., at the offices of Bachman &</p> <p>7 Swanson, PLLC, located at 1402 Broad Street, Durham,</p> <p>8 North Carolina.</p> <p>9 P R O C E E D I N G S</p> <p>10 Whereupon,</p> <p>11 ELI KOZIN,</p> <p>12 having been duly sworn by the Notary Public, was</p> <p>13 examined and testified as follows:</p> <p>14 DIRECT EXAMINATION BY</p> <p>15 MR. JACKSON:</p> <p>16 Q. Good morning, Mr. Kozin.</p> <p>17 A. Good morning.</p> <p>18 Q. My name is Chris Jackson. I'm a lawyer. I</p> <p>19 represent Duke University in a case that's been filed</p> <p>20 by a young woman named Ariana Qayumi who's kind of</p> <p>21 represented by Mr. Ekstrand. You understand you're</p> <p>22 here today to give sworn testimony in this case?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Have you ever had your deposition taken</p> <p>25 before?</p>	<p>Page 4</p>	<p>1 A. No, sir.</p> <p>2 Q. For that reason I just want to remind you</p> <p>3 of a couple of ground rules so we understand each</p> <p>4 other. You understand that everything we're saying</p> <p>5 here today is being taken down by this court reporter?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And for that reason it's important that you</p> <p>8 give verbal responses as opposed to shaking your head</p> <p>9 or saying uh-huh or uh-uh. So if I ask you is that a</p> <p>10 yes or a no or if I ask for verbal responses, that's</p> <p>11 why. Is that fair?</p> <p>12 A. Yes, sir.</p> <p>13 Q. For the same reason, it's important that we</p> <p>14 not talk over one another. So I would ask that you try</p> <p>15 and wait for me to finish my question before you start</p> <p>16 speaking. I'll do the same. I'll wait for you to</p> <p>17 finish your answer before I start asking the next</p> <p>18 question. It'll just make the court reporter here, her</p> <p>19 job much easier. Understood?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Finally, if at any point I ask a question</p> <p>22 that you don't understand or you feel like it assumes</p> <p>23 something maybe you don't think is fair to assume, will</p> <p>24 you please let me know so that I can rephrase the</p> <p>25 question?</p>	<p>Page 5</p>

<p>Page 6</p> <p>1 A. Of course.</p> <p>2 Q. If you have questions or if you don't</p> <p>3 understand, let me know and I'll do my best to</p> <p>4 rephrase. Okay?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And the final thing is if you need a break</p> <p>7 at any point -- I don't expect we'll be here terribly</p> <p>8 long, but if you need a break please just let me know.</p> <p>9 I'll ask that you finish answering whatever question</p> <p>10 has been posed to you. Fair?</p> <p>11 A. You got it.</p> <p>12 Q. So how did you first come to meet -- if you</p> <p>13 have, how did you first come to meet Ariana Qayumi?</p> <p>14 A. She was living in my dorm freshman year.</p> <p>15 Q. And are you currently a student at Duke?</p> <p>16 A. I am not.</p> <p>17 Q. Did you graduate from Duke?</p> <p>18 A. I did not.</p> <p>19 Q. Are you currently a student at any other</p> <p>20 school?</p> <p>21 A. I am not.</p> <p>22 Q. How many credits did you -- strike that.</p> <p>23 Do you intend to return to Duke?</p> <p>24 A. Not to Duke.</p> <p>25 Q. Do you intend to finish your degree at</p>	<p>Page 7</p> <p>1 another university?</p> <p>2 A. At some point.</p> <p>3 Q. How would you describe your relationship</p> <p>4 with Ms. Qayumi?</p> <p>5 A. We were casual acquaintances. We had lived</p> <p>6 in the same dorm freshman year. We obviously knew each</p> <p>7 other. And that's about it. I haven't seen her or</p> <p>8 spoken to her or heard from her in the probably close</p> <p>9 9 to six years now.</p> <p>10 Q. Did you ever spend any time with her in a</p> <p>11 one-on-one setting?</p> <p>12 A. To the extent that we would be on the quad</p> <p>13 and run into each other, yes. If you're talking about</p> <p>14 the two of us privately in a room, not really.</p> <p>15 Q. Did you see her in Israel while you both</p> <p>16 happened to be in the country?</p> <p>17 A. I wouldn't know when she was in the</p> <p>18 country.</p> <p>19 Q. So that would be a -- you don't recall</p> <p>20 seeing her in Israel?</p> <p>21 A. I did not see her.</p> <p>22 Q. And you said you last spoke with Ms. Qayumi</p> <p>23 probably upwards of six years ago?</p> <p>24 A. To the best of my recall, yes.</p> <p>25 Q. Did you ever exchange e-mails with her?</p>
<p>Page 8</p> <p>1 A. To the best of my recall, no.</p> <p>2 Q. Do you have her phone number?</p> <p>3 A. May I check?</p> <p>4 Q. Of course.</p> <p>5 (Witness looks at phone.)</p> <p>6 A. I have a phone number. I don't know if</p> <p>7 it's her.</p> <p>8 Q. Okay. Have you ever exchanged text</p> <p>9 messages with her?</p> <p>10 A. No. At least not on this phone that I have</p> <p>11 saved.</p> <p>12 Q. Have you ever exchanged social media</p> <p>13 messages with her?</p> <p>14 A. I have not.</p> <p>15 Q. And did you just check your social media</p> <p>16 accounts?</p> <p>17 A. I just checked Facebook Messenger, which I</p> <p>18 believe I had and I wanted to double check.</p> <p>19 Q. Sure. Understood. Have you ever</p> <p>20 communicated with any members of Ms. Qayumi's family?</p> <p>21 A. To the best of my knowledge, no, unless</p> <p>22 they were unknown to me members of the family.</p> <p>23 Q. Of course. And I won't hold you to</p> <p>24 something -- if you happened to speak with a cousin of</p> <p>25 hers, I wouldn't hold you to that. You're represented</p>	<p>Page 9</p> <p>1 by counsel here today?</p> <p>2 A. That's correct.</p> <p>3 Q. And you were previously represented by</p> <p>4 Kevin Ginsberg; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. I don't want to know about the substance of</p> <p>7 communications with any person you believe has</p> <p>8 represented you, but I want to ask when did you first</p> <p>9 retain Mr. Ginsberg?</p> <p>10 A. In 2014.</p> <p>11 Q. Was that in connection with your role as a</p> <p>12 witness to the matters underlying Ms. Qayumi's</p> <p>13 complaint?</p> <p>14 A. It was.</p> <p>15 Q. Had you retained any other lawyer prior to</p> <p>16 Mr. Ginsberg?</p> <p>17 A. I had not.</p> <p>18 Q. Did you have a prior relationship with</p> <p>19 Mr. Ginsberg before hiring him?</p> <p>20 A. I had not.</p> <p>21 Q. How did you come to learn of Mr. Ginsberg's</p> <p>22 name or come to hire him?</p> <p>23 A. The rabbi recommended him to me.</p> <p>24 Q. Why did you decide to retain a lawyer in</p> <p>25 connection with your role as a witness in this case?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. I knew that this had the possibility of 2 being a somewhat larger affair, and I knew that there 3 would be plenty of lawyers and I just wanted somebody 4 to, one, kind of handle all the communications for me 5 and, two, just sort of be there representing my 6 interests.</p> <p>7 Q. Understood. So I asked you if you retained 8 anyone -- anyone else. Is there any other lawyer who 9 you felt like has given you legal advice throughout 10 this process other than Mr. Ginsberg and Mr. Bachman? 11 MR. BACHMAN: Just answer as best you 12 can.</p> <p>13 THE WITNESS: I had spoken with 14 Mr. Ekstrand on a couple of different occasions, but I 15 didn't receive advice from him.</p> <p>16 (BY MR. JACKSON)</p> <p>17 Q. Have you ever operated under -- I'm just 18 asking for your subjective belief. And I understand 19 you're not a trained lawyer. Have you ever felt like 20 Mr. Ekstrand was working as your attorney? 21 A. As my personal attorney, no. 22 Q. Is there -- you qualified that as your 23 "personal attorney." Do you feel like he was working 24 as your attorney in any capacity? 25 A. No.</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Have you signed any sort of declaration in 2 connection with this case? 3 A. I have a declaration that I need to make -- 4 I did not.</p> <p>5 Q. So you've got a declaration there in front 6 of you but you've not signed it? 7 A. That is correct.</p> <p>8 Q. Have you offered any form of sworn 9 testimony in connection with the incidents giving rise 10 to this lawsuit? 11 A. Can you explain what you mean. 12 Q. Yeah. I understand you haven't given a 13 deposition before, but have you offered any sort of -- 14 well, let me back up. 15 At the beginning of this deposition you 16 were asked to swear or affirm that the testimony you 17 were about to give was true to the best of your 18 knowledge. Have you offered any other sort or oral 19 statement that was offered under penalty of perjury? 20 A. I don't believe so. 21 Q. Have you signed anything other than a 22 declaration -- say, an affidavit or anything else -- 23 that you felt like was binding you to a particular 24 narrative in connection with this case? 25 A. I have not.</p>
<p style="text-align: right;">Page 12</p> <p>1 Q. You received a copy of the amended 2 complaint in connection with the documents subpoenaed 3 in this case. Do you recall receiving that? 4 A. I do. 5 Q. Did you review that amended complaint? 6 A. Yes, I did. 7 Q. And, in particular, the paragraphs that 8 were referenced in the document subpoena? 9 A. Referenced -- 10 Q. I believe it's paragraphs 20 through 23 of 11 the complaint. 12 A. Yes. I just reviewed them one more time. 13 Q. Of course. 14 A. Yes, I did. 15 Q. And before receiving that amended complaint 16 with the document subpoena, had you ever reviewed the 17 complaint before? 18 A. When I believe some news coverage was 19 received in August of 2016 the original complaint was 20 filed and available online. I did review that. 21 Q. How did you come to learn about the filing 22 of the lawsuit -- original filing of the lawsuit? 23 A. In 2016? 24 Q. Yes, sir. 25 A. Through the news media.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Did you have any sort of Google alert or 2 other notifications set up? 3 A. I did not. 4 Q. How did you come to learn of the news 5 coverage of the case? 6 A. I don't recall. It was either kind of just 7 moving through -- I do read the news -- or a family 8 member alerted me. 9 Q. When you learned about that did that prompt 10 you to take any action or to contact anyone in 11 particular? 12 A. I believe I did follow up with Kevin at 13 that point. And that's when I learned that he had 14 switched firms. 15 Q. Had you been in contact with Mr. Ekstrand 16 before the original complaint was filed? 17 A. I had. 18 Q. Are you able to tell me how many times you 19 had spoken with Mr. Ekstrand before the original 20 complaint was filed? 21 A. Less than five. 22 Q. Had you met in person? 23 A. Yes. 24 Q. Had you also spoken on the phone? 25 A. Yes.</p>

<p>Page 14</p> <p>1 Q. And you had exchanged text messages?</p> <p>2 A. Yes.</p> <p>3 Q. Any other form of communication?</p> <p>4 A. E-mail.</p> <p>5 Q. I want to hand you -- so part of this</p> <p>6 process is going to be -- we're going to introduce</p> <p>7 certain exhibits as part of the records. We can</p> <p>8 identify them later. And so this is going to be marked</p> <p>9 as Exhibit 19 in this case.</p> <p>10 (Deposition Exhibit 19 was marked for</p> <p>11 identification as of this date.)</p> <p>12 Q. And this goes for all exhibits. Please</p> <p>13 take as much time as you feel like you need to review</p> <p>14 any document that's handed to you. I'll represent to</p> <p>15 you this is the document subpoena without the amended</p> <p>16 complaint attached to it just for the sake of saving</p> <p>17 paper.</p> <p>18 A. Yes.</p> <p>19 Q. Does this document look familiar to you?</p> <p>20 A. It does.</p> <p>21 Q. Is this an accurate copy of the document</p> <p>22 subpoena that you received with a caveat that the</p> <p>23 amended complaint is not attached?</p> <p>24 A. Without going through it letter for letter,</p> <p>25 it does seem so.</p>	<p>Page 15</p> <p>1 Q. What, if anything, did you -- strike that.</p> <p>2 Have you ever exchanged written communications with</p> <p>3 Colby Leachman about the subject matter of this case?</p> <p>4 A. About the subject matter, I have not.</p> <p>5 Q. When is the last time that you have</p> <p>6 communicated with Mr. Leachman in any capacity?</p> <p>7 A. Probably sometime towards the end of spring</p> <p>8 of 2011.</p> <p>9 Q. So that would be the end of your freshman</p> <p>10 year?</p> <p>11 A. That is correct.</p> <p>12 Q. When is the last time that you have</p> <p>13 communicated with Brian Self in any capacity?</p> <p>14 A. Right around the same time.</p> <p>15 Q. Have you ever communicated with Mr. Self in</p> <p>16 written form about the subject matter of this case?</p> <p>17 A. I have not.</p> <p>18 Q. Have you ever spoken with Mr. Self in any</p> <p>19 form about the subject matter or the incidents</p> <p>20 underlying this case?</p> <p>21 A. I have not.</p> <p>22 Q. And when I say the "subject matter and the</p> <p>23 incidents underlying this case," you understand me to</p> <p>24 mean the allegations that Mr. Self and Mr. Leachman</p> <p>25 engaged -- the allegation that they engaged in a</p>
<p>Page 16</p> <p>1 nonconsensual sexual encounter with Ms. Qayumi?</p> <p>2 A. I have not engaged in any conversation with</p> <p>3 either one.</p> <p>4 Q. Same question for Frank Jones. In terms of</p> <p>5 oral communications have you ever spoken with Mr. Jones</p> <p>6 about the subject matter of this case?</p> <p>7 A. I have not.</p> <p>8 Q. And so you've never exchanged written</p> <p>9 communications with him on that subject?</p> <p>10 A. That is correct.</p> <p>11 Q. You received this document subpoena. It's</p> <p>12 got a list of documents that are requested. What did</p> <p>13 you do to look for communications that were responsive</p> <p>14 to these requests?</p> <p>15 A. I searched through my e-mails, my text</p> <p>16 messages. And this phone I believe I got in 2014 so</p> <p>17 sometimes Apple carries things over and sometimes they</p> <p>18 don't. So anything that was on my phone as well as</p> <p>19 Facebook Messenger.</p> <p>20 Q. Did you find any Facebook messages that you</p> <p>21 felt were responsive to this request?</p> <p>22 A. I did not.</p> <p>23 Q. Did you search for voicemails?</p> <p>24 A. I did not.</p> <p>25 Q. Do you know if you have any voicemails</p>	<p>Page 17</p> <p>1 from, for example, anyone from Mr. Ekstrand's firm?</p> <p>2 A. I don't believe I do. I can search if you</p> <p>3 would like, but I don't believe that I do.</p> <p>4 Q. You don't need to do it right now. We'll</p> <p>5 probably take a short break and I may ask. Actually,</p> <p>6 if during the break we could just look and see if there</p> <p>7 are any oral communications between Ms. Qayumi's</p> <p>8 representatives and you.</p> <p>9 There are certain individuals listed on</p> <p>10 this document subpoena -- communications between</p> <p>11 yourself and another person. Have you communicated</p> <p>12 with anyone else whose name is not on this document</p> <p>13 subpoena about the subject matter of this case?</p> <p>14 A. Define "communicated."</p> <p>15 Q. Let's start with written communication.</p> <p>16 Have you exchanged e-mails, text messages, Facebook</p> <p>17 messages, anything of that nature with anyone other</p> <p>18 than Mr. Bachman about this -- or Mr. Ginsberg about</p> <p>19 the subject matter of this case?</p> <p>20 A. Does that include immediate family?</p> <p>21 Q. Yes.</p> <p>22 A. Okay. I believe my mother and I probably</p> <p>23 sent e-mails just with news articles on the case back</p> <p>24 and forth.</p> <p>25 Q. Have you commented about the events</p>

<p style="text-align: right;">Page 18</p> <p>1 underlying this complaint to your mother?</p> <p>2 A. I can't speak to that. Have I commented in</p> <p>3 written form?</p> <p>4 Q. Yes.</p> <p>5 A. I don't have those e-mails in front of me.</p> <p>6 Q. When you say you can't speak to it, do you</p> <p>7 mean you don't care to speak to it or you don't know?</p> <p>8 A. I don't know whether or not I attached</p> <p>9 comments to anything that was sent.</p> <p>10 Q. Okay. Anyone else other than members of</p> <p>11 your immediate family?</p> <p>12 A. To the best of my knowledge, no.</p> <p>13 Q. I'm not asking you to reveal these</p> <p>14 communications, but have you spoken with your rabbi or</p> <p>15 any other person within your religious institution</p> <p>16 about --</p> <p>17 A. Orally.</p> <p>18 Q. What?</p> <p>19 A. Only orally.</p> <p>20 Q. Okay. And you asked me to define</p> <p>21 "communications" earlier, and I said we'll start with</p> <p>22 written communications. What about oral communications</p> <p>23 with other persons about the subject matter of this</p> <p>24 lawsuit?</p> <p>25 A. It's come up in casual conversation but</p>	<p style="text-align: right;">Page 19</p> <p>1 nothing --</p> <p>2 Q. Okay. How did you first learn -- so I'm</p> <p>3 going to be referring to the Ariana Qayumi incident,</p> <p>4 the incident underlying this complaint. If I use that</p> <p>5 phrase or that general phraseology can you understand</p> <p>6 me to mean the alleged sexual encounter that occurred</p> <p>7 in March of 2011 involving Ms. Qayumi, Mr. Leachman,</p> <p>8 and Mr. Self?</p> <p>9 A. Yes, sir.</p> <p>10 Q. How did you first learn about that incident</p> <p>11 involving Ms. Qayumi, Mr. Leachman, and Mr. Self?</p> <p>12 A. Shortly after it occurred I would imagine</p> <p>13 sometime in March of 2011 there was a rumor mill, if</p> <p>14 you would, on campus about it. And so it was very much</p> <p>15 hearsay, but I was aware of the possibility that it</p> <p>16 might have occurred at the time.</p> <p>17 Q. Do you recall who you heard about it from?</p> <p>18 A. Other members of the dorm. The discussion</p> <p>19 -- other members of the dorm.</p> <p>20 Q. So you think it was in March of 2011. So</p> <p>21 it was within a few weeks of the incident; would that</p> <p>22 be fair?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Do you remember specifically what you heard</p> <p>25 in the form of those rumors?</p>
<p style="text-align: right;">Page 20</p> <p>1 A. In the form of rumors we had heard that a</p> <p>2 sexual encounter had happened at the provost's house</p> <p>3 off campus on Marco Street. There was a video of it.</p> <p>4 And I remember the exact phrase that was being used and</p> <p>5 used many times between members of the dorm was Eiffel</p> <p>6 tout. That's kind of etched into my mind a little bit.</p> <p>7 Q. And you understood that to be a crude</p> <p>8 reference to a form of multiple-party sexual encounter;</p> <p>9 is that fair?</p> <p>10 A. Yes. But I would prefer to not draw a</p> <p>11 picture.</p> <p>12 Q. Right. And so when you first heard this</p> <p>13 rumor, your understanding of the rumor was that the</p> <p>14 encounter had occurred at the provost's house?</p> <p>15 A. That was my understanding.</p> <p>16 Q. As you sit here today is that still your</p> <p>17 understanding?</p> <p>18 A. I wasn't there.</p> <p>19 Q. Did you hear anything else about the</p> <p>20 incident during this initial rumor phase?</p> <p>21 A. Not that -- I'm sure I did, but nothing</p> <p>22 that I recall specifically.</p> <p>23 Q. Did you ever see the video?</p> <p>24 A. I did not.</p> <p>25 Q. During this initial phase did you hear any</p>	<p style="text-align: right;">Page 21</p> <p>1 rumors to the effect that there may have been</p> <p>2 impairment on the part of any of the participants in</p> <p>3 this encounter?</p> <p>4 A. Define "impairment."</p> <p>5 Q. Yeah. And let's break it down. Let me</p> <p>6 back up further. At this point did you know the</p> <p>7 identity of the female participant in this encounter?</p> <p>8 A. Specifically the one involving Ariana?</p> <p>9 Q. Yes.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And so when these rumors are going</p> <p>12 around, you understood that Ariana Qayumi was the</p> <p>13 female participant in the alleged act; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. At this initial stage did you have an</p> <p>16 understanding as to whether Ms. Qayumi was impaired?</p> <p>17 A. I cannot speculate.</p> <p>18 Q. So at least in terms of what you were</p> <p>19 hearing, you didn't hear one way or the other whether</p> <p>20 she was under the influence of what are commonly known</p> <p>21 as a date rape drug?</p> <p>22 A. What I can say -- oh, a date rape drug. I</p> <p>23 have no knowledge.</p> <p>24 Q. And, as you sit here today, you still have</p> <p>25 no knowledge one way or the other whether she was under</p>

<p style="text-align: right;">Page 22</p> <p>1 the influence of any sort of drug that's commonly known 2 as the date rape drug? 3 A. Firsthand, I have no knowledge. 4 Q. Do you have any secondhand or knowledge 5 from any other source on that subject? 6 A. I've heard rumors. That's not my 7 knowledge. 8 Q. At the time of this initial rumor phase did 9 you gain any understanding as to whether Ms. Qayumi was 10 under the influence of alcohol during this encounter? 11 A. I was not. Can you repeat the question. 12 Q. Yeah. So you're hearing things about this 13 encounter. 14 A. That's correct. 15 Q. Did you hear one way or the other whether 16 Ms. Qayumi was under the influence of alcohol? 17 A. I did not. 18 Q. So is it correct to say that during this 19 initial phase the extent of your knowledge is there's a 20 rumor going around that Ms. Qayumi was involved in a 21 sexual encounter with more than one male at the 22 provost's house? 23 A. That was my -- that was the extent -- well, 24 that was not the full extent of the rumor but I did 25 understand that, yes.</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. And that this encounter was video recorded? 2 A. Yes. 3 Q. Are there any other facts that were part of 4 the rumor that you heard during this initial phase? 5 A. That it was not consensual. 6 Q. What did you hear about that? 7 A. Simply it was not consensual. 8 Q. Did you hear anything about use of force 9 versus not consensual due to impairment or anything of 10 that nature? 11 A. Define "force." 12 Q. Well, why don't you just tell me what you 13 heard about the lack of consent. 14 A. In 2011 on freshman year campus, unless 15 people were in a long-term committed relationship, my 16 recollection of the general happenings that very few 17 sexual encounters happened completely sober. That 18 being said, it seemed that there was -- the rumors were 19 that there was some form of coercion that was used. I 20 don't know if it was physical force. I don't know if 21 it was intimidation. I don't know if it was some sort 22 of accelerant or other drug. But my recall of the 23 rumors was that there was coercion in some form used. 24 Q. And I want to -- 25 A. But this is all secondhand.</p>
<p style="text-align: right;">Page 24</p> <p>1 Q. You spoke to a set of circumstances 2 existing in 2011 on Duke's campus and the circumstances 3 under which individuals would engage in sexual 4 activity. What was that based on -- that understanding 5 about whether people would engage in sexual activity? 6 A. Having been a part of that culture. 7 Q. So when you said that you -- this was your 8 understanding, when you heard those rumors did you 9 infer that Ms. Qayumi must have been impaired to have 10 engaged in this type of activity or to have been 11 engaged in this type of activity? 12 A. It did not seem like herself, yes. 13 Q. But that was not -- that was based on your 14 perception of what was happening on campus and being a 15 part of that environment? 16 A. And based on the fact it wasn't the first 17 time rumors had circulated regarding these three 18 gentlemen. 19 Q. And, at this point, these three gentlemen 20 you're referring to -- 21 A. Colby, Brian, and Frank. 22 Q. Have you ever spoken about this incident 23 with Ariana Qayumi? 24 A. I recall one encounter on the quad after 25 this had happened, and there was something along the</p>	<p style="text-align: right;">Page 25</p> <p>1 lines of -- I don't think it was discussed directly, 2 but I do somewhere in the reaches of my mind recall her 3 referring to it. It was a very brief encounter on the 4 quad in between classes or something of that nature. 5 Q. Was it just the two of you? 6 A. Yeah. I mean, other people were walking 7 by, but it was just the two of us in conversation. And 8 it wasn't any sort of elaborate conversation. 9 Q. At that point you would not have called 10 yourself a friend of Ariana Qayumi; is that right? 11 A. Casual acquaintance. We lived in the same 12 dorm. 13 Q. You said you crossed paths on campus, and 14 your recollection is that there was some reference to 15 this underlying incident? 16 A. That's correct. 17 Q. Initiated by whom? 18 A. I believe by her. 19 Q. Are you able to tell me any other details 20 about that? 21 A. It was very much brief and in passing. It 22 probably wasn't longer than 45 seconds. 23 Q. Did you ask her if she was all right? 24 A. I don't recall. 25 Q. So you're not able -- as you sit here</p>

<p style="text-align: right;">Page 26</p> <p>1 today, you're not able to provide any additional 2 details about that communication beyond what you've 3 told me? 4 A. It was a passing conversation in 2011. I 5 cannot. 6 Q. Did you ever reach out to Ms. Qayumi after 7 that conversation to check on her? 8 A. I did not. I had informed her counsel that 9 should she wish to discuss it or something, she was 10 more than welcome to give me a call but that I would 11 not reach out to her. If she wanted to do that, that 12 was up to her. 13 Q. What was the -- let me back up. How did 14 you come to learn that Ms. Qayumi was represented by 15 counsel? 16 A. I learned about it in 2014 through a 17 conversation with the dean on campus. 18 Q. What dean? 19 A. Dean Blackshear. 20 Q. Sorry? 21 A. Dean Blackshear. 22 Q. So Dean Blackshear informed you that 23 Ms. Qayumi had hired a lawyer? 24 A. That's correct. 25 Q. What lawyer?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Mr. Ekstrand. 2 Q. So there was a point where Mr. Ekstrand is 3 involved. What did Dean Blackshear tell you? 4 A. He told me that one of the women who had 5 accused the three gentlemen of unwanted sexual contact 6 or sexual assault had retained counsel and was pushing 7 things forward. And from my conversation with him, I 8 was able to deduce which woman and I said, oh, my God. 9 And that's when I called my rabbi. He said I needed to 10 -- I explained the situation to him, and he said I 11 needed to speak with her counsel. 12 Q. Did that -- 13 A. And let me -- just to be clear for the 14 record -- I'm sorry to talk over you -- that 15 conversation was with my rabbi in New York. The 16 conversation where I found -- Mr. Ginsberg was with the 17 rabbi here. 18 Q. What else can you tell me about that 19 conversation with Dean Blackshear? 20 A. It was a long conversation. I recall we 21 were discussing just different happenings with the 22 University. We were discussing different 23 administrators at the University. We were discussing, 24 I believe, the provost. And I stopped and said, "Do 25 you know who my freshman year roommate was." And he</p>
<p style="text-align: right;">Page 28</p> <p>1 said, "No." I said, "Colby Leachman." He went, "He 2 was a monster." It was Dr. Blackshear's response. And 3 I said, "I know. I filed a report." His eyes sort of 4 lit up and he said, "You filed a report." 5 And that's -- I don't -- that was what I 6 recall more or less verbatim. The conversation kind of 7 had us put the dots together after that, that one of 8 the women who had alleged the assault had come forward 9 and that I had filed a report. And those dots had not 10 been connected as far as we know to that point. 11 Q. What was the nature of your relationship 12 with Dean Blackshear at that point? 13 A. He was an informal advisor. 14 Q. Were you an enrolled student at the time of 15 this conversation? 16 A. I was. 17 Q. So I had asked you earlier if you had ever 18 reached out to Ms. Qayumi and you said not directly, 19 but you had informed her counsel that you were happy to 20 speak with him -- with Mr. Ekstrand; is that right? 21 A. That's correct. 22 Q. So did you initiate the conversation with 23 Mr. Ekstrand? 24 A. I did. 25 Q. And during that conversation you said that</p>	<p style="text-align: right;">Page 29</p> <p>1 you would be willing to speak with Ms. Qayumi but you 2 would not pursue it unless she wanted you to; is that 3 fair? 4 A. Yes. And my offer in that was not as much 5 as far as talking about the facts of the case or 6 anything of that nature, more so to just provide 7 support for her as a person. 8 Q. And the two of you have never since spoken 9 directly in any form whether through written or oral 10 communication? 11 A. Who are the two of us? 12 Q. You and Ms. Qayumi. 13 A. That's correct. 14 Q. Did you have any firsthand knowledge about 15 Ms. Qayumi's communications with anyone who was working 16 on behalf of Duke in the course of this investigation? 17 A. You said firsthand knowledge? 18 Q. Yes. 19 A. I did not. 20 Q. Do you have any knowledge of any form about 21 Ms. Qayumi's communications with Duke about Duke's 22 investigation into this matter? 23 A. Rumor and speculation and things I picked 24 up through conversation? 25 Q. Sure. Are you able to give me a synopsis</p>

<p style="text-align: right;">Page 30</p> <p>1 of what your understanding is?</p> <p>2 A. My understanding is that within days of the</p> <p>3 report that I filed, she had gone to -- I believe it</p> <p>4 was the Women's Center, and filed a report there. I</p> <p>5 don't know if there was a previous call to the police</p> <p>6 or anything else. But that was within several -- a</p> <p>7 couple of days of my report being filed in the same</p> <p>8 week that she had filed a report as well. And they</p> <p>9 went through whatever process that they do.</p> <p>10 Q. And what's the basis -- I know you said</p> <p>11 that this is a product of rumors and other matters.</p> <p>12 What is the specific basis if you're able to tell me?</p> <p>13 A. Conversations with Dean Blackshear and</p> <p>14 Mr. Ekstrand -- Mr. Ginsberg, excuse me, and other</p> <p>15 people connected to the case.</p> <p>16 Q. What did Dean Blackshear tell you about</p> <p>17 that subject of Duke's investigation and Duke's</p> <p>18 communications with Ms. Qayumi?</p> <p>19 A. He did not identify her to me. I was able</p> <p>20 to just through the conversation. I don't recall how</p> <p>21 -- if a video had been mentioned that would have likely</p> <p>22 been the reason I was able to deduce that she was the</p> <p>23 woman that he was describing since there were -- this</p> <p>24 was all secondhand anyway, but there were rumors about</p> <p>25 this happening on multiple occasions. I know I had</p>	<p style="text-align: right;">Page 31</p> <p>1 witnessed one. This was alleging a different occasion,</p> <p>2 and there had been rumors about many, many other</p> <p>3 occasions where this exact sort of incident occurred.</p> <p>4 I was able to deduce it was Ariana.</p> <p>5 Q. Did Dean Blackshear ever explain to you</p> <p>6 whether Duke had an obligation to preserve the privacy</p> <p>7 of any individual involved in disciplinary proceedings?</p> <p>8 A. He did not reveal.</p> <p>9 Q. Okay. But did he explain to you that I</p> <p>10 cannot reveal the identity of other students who were</p> <p>11 the subject of disciplinary investigations?</p> <p>12 A. There was no specific mention of that.</p> <p>13 Q. And that goes for -- my question is not</p> <p>14 specific to an alleged victim and something like this,</p> <p>15 but also an accused. Did Dean Blackshear ever explain</p> <p>16 to you any of Duke's obligations to preserve the</p> <p>17 privacy of any of the accused students?</p> <p>18 MR. EKSTRAND: Objection. Assumes a</p> <p>19 legal proposition that they have that obligation with</p> <p>20 respect to criminal activity.</p> <p>21 (BY MR. JACKSON)</p> <p>22 Q. Do you understand my question?</p> <p>23 A. I sort of lost it.</p> <p>24 Q. Did Dean Blackshear ever explain to you</p> <p>25 that Duke had an obligation to preserve the privacy of</p>
<p style="text-align: right;">Page 32</p> <p>1 the identity of any individuals?</p> <p>2 A. For activity that happened off campus?</p> <p>3 Q. On or off.</p> <p>4 A. We had -- no, we did not have that</p> <p>5 conversation. But I, again, was the one to identify</p> <p>6 the gentlemen firsthand.</p> <p>7 Q. And you asked the question about for</p> <p>8 activities that happened off campus. Does that change</p> <p>9 the answer to your question?</p> <p>10 A. I'm not a lawyer.</p> <p>11 Q. Right.</p> <p>12 A. What I do know is -- I'll let the lawyers</p> <p>13 figure that one out.</p> <p>14 Q. No. My question is, you had brought up the</p> <p>15 subject of activities happening on campus. My question</p> <p>16 is whether the premise of off campus versus on campus,</p> <p>17 whether that changes the answer to your question about</p> <p>18 --</p> <p>19 A. Oh, it does not change the answer.</p> <p>20 Q. Okay. Thank you. Do you have any</p> <p>21 firsthand knowledge about Duke's investigation into</p> <p>22 Ms. Qayumi's report of an incident with Mr. Leachman</p> <p>23 and Mr. Self?</p> <p>24 A. I do not.</p> <p>25 Q. Do you have any firsthand knowledge about</p>	<p style="text-align: right;">Page 33</p> <p>1 the student conduct panel hearing that was held for</p> <p>2 Mr. Leachman and Mr. Self?</p> <p>3 A. I do not.</p> <p>4 Q. Do you have any firsthand knowledge about</p> <p>5 an investigation performed by Celia Irvine who was</p> <p>6 retained by Duke to investigate this matter?</p> <p>7 A. I do not. I was never contacted concerning</p> <p>8 this investigation.</p> <p>9 Q. Do you have any information as to any</p> <p>10 impact that Peter Lange -- strike that. Do you have</p> <p>11 any information about any influence that Peter Lange</p> <p>12 did or did not exert over the investigation in this</p> <p>13 matter?</p> <p>14 A. Is this a question as to firsthand?</p> <p>15 Q. I'll break it down. Do you have any</p> <p>16 firsthand knowledge about any influence that Peter</p> <p>17 Lange exerted over the investigation in this matter?</p> <p>18 A. I do not.</p> <p>19 Q. Do you have any firsthand knowledge about</p> <p>20 any influence that Lori Leachman has exerted over this</p> <p>21 process?</p> <p>22 A. I do not.</p> <p>23 Q. Knowledge returning to -- do you have any</p> <p>24 knowledge that you would not qualify as firsthand</p> <p>25 knowledge about influence that Peter Lange did nor did</p>

<p style="text-align: right;">Page 34</p> <p>1 not exert over this process?</p> <p>2 A. I've heard rumors.</p> <p>3 Q. What are those rumors?</p> <p>4 A. The rumors were that he did, in fact, exert</p> <p>5 influence.</p> <p>6 Q. Did in fact?</p> <p>7 A. Did in fact. He did exert influence in</p> <p>8 order to have as light of a penalty imposed.</p> <p>9 Q. What's the -- who or what is the source of</p> <p>10 those rumors?</p> <p>11 A. General conversation.</p> <p>12 Q. Can you give any more detail about those</p> <p>13 rumors?</p> <p>14 A. I cannot.</p> <p>15 Q. So do you have any basis for those rumors?</p> <p>16 A. Completely unsubstantiated except -- I</p> <p>17 mean, that sort of rumor generally is.</p> <p>18 Q. Same question as to Lori Leachman. Do you</p> <p>19 have any information that you would not classify as --</p> <p>20 that you would not qualify as firsthand knowledge about</p> <p>21 Lori Leachman exerting influence over this process?</p> <p>22 A. I do not.</p> <p>23 Q. Do you have any firsthand knowledge about</p> <p>24 anyone else exerting undue influence over this process?</p> <p>25 A. I do not.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Any non-firsthand knowledge about anyone</p> <p>2 else exerting influence over this process?</p> <p>3 A. The same rumor mill that had named Provost</p> <p>4 Lange had also named Dean Sue, Larry Netta, Steven</p> <p>5 Brian.</p> <p>6 Q. What did you hear about Dean Sue?</p> <p>7 A. About all three I heard the same thing that</p> <p>8 all three were aware of the case and were attempting to</p> <p>9 have as light a penalty imposed as possible.</p> <p>10 Q. Do you remember speaking with anyone in</p> <p>11 particular about that subject and hearing that rumor</p> <p>12 from anyone in particular?</p> <p>13 A. Can you rephrase the question.</p> <p>14 Q. Yeah, that was two questions. Thank you.</p> <p>15 Do you remember hearing that rumor from anyone in</p> <p>16 particular?</p> <p>17 A. There was -- no, I do not.</p> <p>18 Q. As you sit here today, you don't know</p> <p>19 whether that's true one way or the other; is that</p> <p>20 right?</p> <p>21 A. It's not my place to speculate.</p> <p>22 Q. So is it fair to say Mr. Ekstrand was the</p> <p>23 first representative of Ms. Qayumi who you spoke with</p> <p>24 about this incident?</p> <p>25 A. To my knowledge, yes.</p>
<p style="text-align: right;">Page 36</p> <p>1 Q. Tell me about that first contact.</p> <p>2 A. After speaking with my rabbi who noted that</p> <p>3 I had a moral obligation to the victim of the alleged</p> <p>4 assault, I went over to Mr. Ekstrand's office and</p> <p>5 presented myself and said that I had filed a report in</p> <p>6 conjunction with the same defendants and very similar</p> <p>7 circumstances and similar situation. And we sat down</p> <p>8 and took some notes that day.</p> <p>9 Q. The determination that if this was a</p> <p>10 similar incident and similar circumstances, what was</p> <p>11 that determination based on?</p> <p>12 A. It was the same three people, and it was</p> <p>13 what I can only qualify as a gang rape.</p> <p>14 Q. The statement about the gang rape, that was</p> <p>15 a product of rumors that you had heard?</p> <p>16 A. Can you rephrase the question.</p> <p>17 Q. Yeah. When you're referring to an incident</p> <p>18 as a gang rape, are you -- is it your understanding</p> <p>19 that Ms. Qayumi was subjected to a gang rape at the</p> <p>20 hands of Colby Leachman, Brian Self, and Frank Jones?</p> <p>21 A. I have no firsthand way to substantiate it.</p> <p>22 That was my understanding.</p> <p>23 Q. Do you have an understanding one way or</p> <p>24 another as to whether Ms. Qayumi is contending that she</p> <p>25 had a sexual encounter with Frank Jones whether</p>	<p style="text-align: right;">Page 37</p> <p>1 consensual or non-consensual?</p> <p>2 A. I'm sorry. Can you repeat that.</p> <p>3 Q. Yeah. Do you know whether Ms. Qayumi is</p> <p>4 contending that she had any form of sexual encounter</p> <p>5 with Frank Jones?</p> <p>6 A. I believe that's the basis of the -- I'm a</p> <p>7 little confused as to what the question is asking.</p> <p>8 Q. Do you know whether Ms. Qayumi is</p> <p>9 contending that she had a sexual encounter with Frank</p> <p>10 Jones?</p> <p>11 MR. BACHMAN: So you're asking him if</p> <p>12 he knows what Ariana Qayumi is contending?</p> <p>13 MR. JACKSON: Yeah.</p> <p>14 THE WITNESS: Yes, that there was a</p> <p>15 sexual encounter.</p> <p>16 (BY MR. JACKSON)</p> <p>17 Q. So, as you sit here today, your</p> <p>18 understanding is that Ms. Qayumi had some form of</p> <p>19 sexual encounter with Frank Jones?</p> <p>20 A. Are we just repeating the same questions?</p> <p>21 Q. You sort of qualified your answer. I asked</p> <p>22 you a yes or no question. You said, yes, that there</p> <p>23 was a sexual encounter. I'm trying to clarify the</p> <p>24 nature of that incident. As you sit here today, do you</p> <p>25 have an understanding as to whether Ms. Qayumi is</p>

<p>Page 38</p> <p>1 contending that she had a sexual encounter with Frank 2 Jones?</p> <p>3 A. With -- I'm sorry. With Frank Jones 4 specifically?</p> <p>5 Q. Yes.</p> <p>6 A. I'm unaware if Frank -- for some reason 7 every time this comes up, Frank is in a different 8 category from Brian and Colby. To the best -- I don't 9 know exactly what they're contending. That's honestly 10 not my business. As far as I'm concerned, my business 11 is to state what I know about the case from firsthand 12 knowledge.</p> <p>13 Q. Right. And I'm trying to get an 14 understanding as to what that is. I'll move on from 15 that. Did you know Mr. Ekstrand before you reached out 16 to him on that first occasion?</p> <p>17 A. I did not.</p> <p>18 Q. And by "that first occasion," I mean that 19 occasion after you spoke with your rabbi. You didn't 20 know him before that?</p> <p>21 A. That is correct.</p> <p>22 Q. And you came to learn of his involvement 23 through Dean Blackshear?</p> <p>24 A. That is correct.</p> <p>25 Q. You produced some text messages in this</p>	<p>Page 39</p> <p>1 case.</p> <p>2 (Deposition Exhibit 20 was marked for 3 identification as of this date.)</p> <p>4 Q. Are you familiar with this document?</p> <p>5 A. I am.</p> <p>6 Q. Did you review it?</p> <p>7 A. No.</p> <p>8 Q. The first text messages in the -- the first 9 text message in this exchange appears to be dated 10 January 3, 2016. Do you know when your first contact 11 with Mr. Ekstrand was relative to this text? You say 12 it was in 2014?</p> <p>13 A. That is correct. It would have, I believe, 14 been in April of 2014. I'm not sure I have the exact 15 dates on that.</p> <p>16 Q. Why is the date April 2014 or that range of 17 time --</p> <p>18 A. It seems like this case always bubbles back 19 up in April -- at least my involvement in it.</p> <p>20 Q. But what about April 2014 is causing you to 21 think of that timeframe?</p> <p>22 A. I remember it being three years after I 23 filed the report.</p> <p>24 Q. And were you -- I'm sorry. You said you 25 spoke with your rabbi in New York?</p>
<p>Page 40</p> <p>1 A. That's correct.</p> <p>2 Q. Were you in New York for any particular 3 reason?</p> <p>4 A. No, I was here.</p> <p>5 Q. You spoke with your rabbi on the phone?</p> <p>6 A. That's correct.</p> <p>7 Q. Did you exchange any text messages with 8 Mr. Ekstrand before January 3, 2016?</p> <p>9 A. To the best of my knowledge, no.</p> <p>10 Q. What did you discuss with Mr. Ekstrand in 11 April of 2014 when you first spoke with him?</p> <p>12 A. We discussed the report that I had filed 13 with Dean Pesetski as well as my secondhand knowledge 14 to the assault that had occurred allegedly.</p> <p>15 Q. Let's start with the Ms. Qayumi part of it. 16 What did you discuss specifically with Mr. Ekstrand 17 during that initial meeting in relation to Ms. Qayumi?</p> <p>18 A. I believe that we discussed that I was 19 aware that she had made allegations and that critical 20 mass -- that in the three years before that meeting, a 21 critical mass had been reached in the rumor mill and I 22 had perceived them to have some basis to them. And I 23 was aware at that point that something was potential.</p> <p>24 Q. What do you mean by the phrase "a critical 25 mass had reached the rumor mill"?</p>	<p>Page 41</p> <p>1 A. I was studying sociolinguistics at Duke. 2 If perception is reality in a sociolinguistic world and 3 languages are a basis of forming that reality, we can't 4 perceive anything to necessarily be 100 percent true, 5 but when we have enough direct evidence of that and we 6 form our assumptions about the world and that 7 eventually something is discussed on such a level that 8 it becomes what is close to be perceived as fact 9 regardless of circumstances.</p> <p>10 There was enough rumor going around about 11 the other incident -- the Ms. Qayumi incident -- that 12 it had become perceived to be true by pretty much 13 everybody at that point that I recall.</p> <p>14 Q. At what point did you reach the conclusion 15 that the rumor mill had reached the critical mass?</p> <p>16 A. Probably just before I filed my report.</p> <p>17 Q. So this was 2011?</p> <p>18 A. That's correct.</p> <p>19 Q. You were a freshman at the time?</p> <p>20 A. That's correct.</p> <p>21 Q. Had you declared a major at that point?</p> <p>22 A. I had not.</p> <p>23 Q. How many courses had you taken in the arena 24 of sociolinguistics?</p> <p>25 A. I'm not here to testify as an expert in</p>

<p style="text-align: right;">Page 42</p> <p>1 sociolinguistics.</p> <p>2 Q. So the --</p> <p>3 A. I'm just telling you what I was hearing.</p> <p>4 Q. So the statement about sociolinguistics and</p> <p>5 the perception of reality, that's your lay view of the</p> <p>6 meaning of language, but it's not -- you're not</p> <p>7 offering that as any form of expert opinion; is that</p> <p>8 right?</p> <p>9 A. That's correct.</p> <p>10 Q. You also mentioned -- so you spoke with</p> <p>11 Mr. Ekstrand about Ariana Qayumi. You also mentioned</p> <p>12 another incident. What did you speak with Mr. Ekstrand</p> <p>13 in relation to that other incident?</p> <p>14 A. I told him what I witnessed and the report</p> <p>15 I filed.</p> <p>16 Q. As to what you witnessed, what did you tell</p> <p>17 Mr. Ekstrand?</p> <p>18 A. I believe I laid out to him exactly the</p> <p>19 same thing I laid out to Ms. Pesetski and everybody</p> <p>20 else.</p> <p>21 Q. And that is?</p> <p>22 A. Do you want a whole recount of the</p> <p>23 incident?</p> <p>24 Q. Sure.</p> <p>25 A. Let me make sure I get the dates correct.</p>	<p style="text-align: right;">Page 43</p> <p>1 So it was a Saturday night. It was April 9th, 2011.</p> <p>2 Q. And are you referring to a document right</p> <p>3 now?</p> <p>4 A. I'm just referring to the dates here</p> <p>5 because I have previously verified them. I don't have</p> <p>6 them. I don't -- this is not relevant except that I</p> <p>7 wanted to double check.</p> <p>8 Q. No, I understand. I just want to make</p> <p>9 sure.</p> <p>10 A. So it was April 9th, 2011. It was Saturday</p> <p>11 night. I was hosting a pregame in my dorm room as was</p> <p>12 Colby separately. The relationship between Colby and I</p> <p>13 had deteriorated extraordinary, I would say, by that</p> <p>14 point. The two of us barely ever spoke other than</p> <p>15 dealing with kind of the logistics of being roommates,</p> <p>16 going out of town, cleaning things up. It was very</p> <p>17 much basically just being in the room. We were clearly</p> <p>18 not seeing eye to eye on much else besides that at that</p> <p>19 point.</p> <p>20 I was hosting a small pregame in my room</p> <p>21 that night, as was he. He was on one side of the room</p> <p>22 with his folks. It's not that the dorm rooms are very</p> <p>23 large. I was on the other side. And of course it</p> <p>24 wasn't -- we weren't that far apart so it wasn't two</p> <p>25 close circles. It was just kind of two groups of</p>
<p style="text-align: right;">Page 44</p> <p>1 people. But we were talking to each other. One of the</p> <p>2 women at that pregame was, I believe, a friend from</p> <p>3 high school of another student -- a female student who</p> <p>4 was living in the dorm. She was a female student. She</p> <p>5 was a freshman and she was visiting from one of the</p> <p>6 universities in Virginia. I don't recall which</p> <p>7 university she was visiting from. I don't recall how</p> <p>8 long she was there for. But she was invited to the</p> <p>9 pregame with Colby and his friends, and she was</p> <p>10 drinking with them. She and Colby had appeared to be</p> <p>11 getting along fairly well.</p> <p>12 We went to our event that night. Colby</p> <p>13 went to his event with the girl. I came back before</p> <p>14 him. I was in the room with two of my friends and we</p> <p>15 were kind of handing out a little bit. Colby texted me</p> <p>16 -- from what I remember, he texted me asking if he</p> <p>17 could have the room. I was actually about to go to bed</p> <p>18 at that point. My friends were about to leave. I</p> <p>19 said, "Yeah, that's fine. Just make it quick. I would</p> <p>20 like to go to bed."</p> <p>21 He came into the room as I was leaving with</p> <p>22 my two friends. He came into the room with the girl</p> <p>23 and kind of walking down the hallway and coming into</p> <p>24 the room. I didn't think too much of it at that time</p> <p>25 because, like I said, they had been together earlier in</p>	<p style="text-align: right;">Page 45</p> <p>1 the night and seemed to be getting along with each</p> <p>2 other. I went downstairs to the common room with my</p> <p>3 two friends. I believe that I had asked him to finish</p> <p>4 it up within half an hour to 45 minutes or something</p> <p>5 along those lines. It was about roughly an hour later</p> <p>6 the three of us went back upstairs and kind of went,</p> <p>7 "Hey, it's getting late. I want to go to bed." They</p> <p>8 had kind of stayed with me downstairs.</p> <p>9 That's when as we were coming up the stairs</p> <p>10 and we turned the corner into the hallway, that's when</p> <p>11 we saw Frank and Brian entering the room. We saw them</p> <p>12 knock, knock. The door was unlocked. They just</p> <p>13 entered the room, closed it behind them. By that point</p> <p>14 we were close enough to hear the door lock. And then</p> <p>15 the two of them pressed their ear to the door and, just</p> <p>16 for my having lack of words for it, I do want to refer</p> <p>17 to this -- I believe it was unmistakable sounds of</p> <p>18 sexual interaction.</p> <p>19 Q. Can I interrupt you. You said the two of</p> <p>20 them had pressed their --</p> <p>21 A. My two friends I was with at the time, they</p> <p>22 had pressed their ear to the door. I could hear well</p> <p>23 enough that I didn't have to and didn't really care to</p> <p>24 at that point. That's when we -- it had gone from this</p> <p>25 girl who was clearly impaired in some way coming back</p>

<p style="text-align: right;">Page 46</p> <p>1 to the room with Colby, which they had been hanging 2 out. We found that to be a somewhat normal course of 3 action, to having two other gentlemen enter the room 4 where at that point none of us were in the room, none 5 of us know what had been agreed to or what happened. 6 But it clearly wasn't a normal event. 7 I went back downstairs. The two of them 8 went back to their dorms. They were not in the same 9 dorm. They left. I was kind of -- I took a nap in the 10 common room. I got a text saying I could go back up to 11 the room. I went back up to the room. I remember 12 specifically having made my bed that day because I was 13 having friends over for a pregame. And so I do 14 remember specifically having made my bed. I noticed 15 that my sheets and my bed were all disheveled and 16 thrown out of place. 17 That was, on another level, disturbing to 18 me just because that's the place where I sleep and my 19 DNA is obviously there, and I didn't know who would say 20 what. And, again, we had this very strong suspicion 21 that things were not as they seemed. The next day -- 22 and that was late Saturday night or early Sunday 23 morning. Later on that Sunday we had the e-mail 24 exchange. 25 Q. Can we stop the story there and let me ask</p>	<p style="text-align: right;">Page 47</p> <p>1 you some questions, and then we'll pick up on the next 2 morning. 3 A. Sure. 4 Q. Too many things. I understand. Sorry to 5 interrupt you like that. It's just a lot of ground 6 covered. So this is a Saturday night. You mentioned 7 that you and Mr. Leachman were both hosting people in 8 your dorm room. You mentioned the term "pregame." 9 A. That's correct. 10 Q. Do I understand you to be saying that you 11 were drinking alcohol in your room? 12 A. That's correct. 13 Q. And you went to an event after this 14 pregame. Where did you go? 15 A. I don't recall that night exactly where we 16 went. 17 Q. Did you go to an event where alcohol was 18 served? 19 A. We did. 20 Q. Did you go to -- and did you consume 21 alcohol at that event? 22 A. Not a lot. 23 Q. How much did you have to drink at the 24 pregame, if you can remember? 25 A. Probably just a beer or two. The night</p>
<p style="text-align: right;">Page 48</p> <p>1 before, we had hosted a larger party and so we had been 2 drinking a lot more so that Saturday was kind of like a 3 night off. 4 Q. A night off -- 5 A. From heavy drinking. 6 Q. So you drank less than you had the previous 7 night? 8 A. Yes. 9 Q. And you and Mr. Leachman did not have a 10 good relationship at this time? 11 A. That's correct. 12 Q. What had led to the two of you having a 13 relationship that had deteriorated? 14 A. We didn't see eye to eye on pretty much 15 anything. His group of friends were completely 16 different from my group of friends. I had my 17 suspicions of him after all the rumors I had heard. 18 And I just didn't interpret him to be a nice person. 19 He didn't seem to want to get along. He had his group 20 of friends and that was fine, but he didn't seem to -- 21 Q. During your freshman year at Duke did you 22 apply to or rush any fraternities? 23 A. I did. 24 Q. Did you ultimately end up participating in 25 a fraternity?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. I did. 2 Q. Did you apply to or rush the Delta Sig 3 fraternity that Mr. Leachman was involved in? 4 A. Delta Sig, to the best of my knowledge, 5 during rush I kind of walked in for ten seconds, looked 6 around, and walked out from their first event. 7 Q. You said you did participate in a 8 fraternity at Duke? 9 A. That's correct. 10 Q. What fraternity? 11 A. Sigma Phi. 12 Q. Do you know if you went to a Sigma Phi 13 event on the night in question? 14 A. I did not. Oh, the night of -- 15 Q. Let me back up. Did you go to a Sigma Phi 16 event the night before -- the night of heavier 17 drinking? 18 A. To the best of my knowledge, it was when I 19 went, yes. 20 Q. What about the night in which you hosted 21 the pregame in your dorm room and then went out to some 22 other event? Was that your fraternity event? 23 A. There were several -- from what I remember 24 of that event, there were several members of the 25 fraternity there, but it was not a fraternity event.</p>

<p>1 Q. So you did not like Mr. Leachman at this 2 point? 3 A. I didn't have anything against him. 4 Q. The Duke student who was hosting this young 5 woman who was visiting from another school, do you know 6 that Duke student's name? 7 A. I don't recall. 8 Q. Were you friends with that person at this 9 time? 10 A. She was an acquaintance from the dorm. 11 Q. You said Mr. Leachman texted you and said 12 that he needed the room. Did you change phones 13 subsequent to that text exchange? 14 A. After the text exchange? 15 Q. Yes. 16 A. Yes, that was 2011. 17 Q. Do you have any text messages from 18 Mr. Leachman in your current phone? 19 A. I don't believe I do. I can triple check. 20 (Witness looks at phone.) 21 A. I do not. 22 Q. During this pregame event in your dorm you 23 said it appeared that Mr. Leachman and this student 24 were getting along well. 25 A. That's right.</p>	<p>1 Q. And so when he and this visiting student 2 returned from the room, while you suspected they might 3 have been impaired, you were not alarmed by the fact 4 that they appeared to be heading back to the room in 5 private; is that fair? 6 A. It's not something I would have done, but 7 it's something I had seen at that point and it wasn't 8 my place to judge. 9 Q. And so at that point you didn't suspect 10 that there was non-consensual sexual activity occurring 11 in your dorm room? 12 A. At that exact point, no. 13 Q. The two friends who you were spending time 14 with, is one of those gentlemen Dillan Gamerut? 15 A. No. 16 Q. Who were the friends that you were spending 17 time with? 18 A. Alex Buben and Jonathan Igne. I believe 19 his mother's maiden name is Bianchi which is sometimes 20 appended. 21 Q. Which is sometimes -- 22 A. Appended. 23 Q. Thank you. And so were these gentlemen in 24 your room with you at the time when Mr. Leachman asked 25 you if he could have the room?</p>
<p>1 A. They were. 2 Q. And they stayed with you up until the point 3 when you took a nap in the common room? 4 A. Yes. 5 Q. Do you know who Dillan Gamerut is? 6 A. I do. 7 Q. During your freshman year at Duke were you 8 a friend of Dillan Gamerut? 9 A. I would say I was. 10 Q. At any point did you spend time with him 11 during that evening? 12 A. I don't recall. 13 Q. You said you came back to the hallway and 14 you observed Mr. Jones and Mr. Self entering your dorm 15 room? 16 A. That's correct. 17 Q. You don't know the nature of any 18 communications between Mr. Self and this young woman; 19 is that fair? 20 A. Obviously, no. 21 Q. You don't know the nature of any 22 communication between Frank Jones and this young woman, 23 correct? 24 A. That's correct. 25 Q. You don't know whether this encounter that</p>	<p>1 you described was consensual or not, correct? 2 A. I was not in the room. I have no way of 3 knowing. 4 Q. Earlier you used the term "gang rape" when 5 you described what you had discussed with Mr. Ekstrand. 6 And I understand you were using that term to refer to 7 the encounter involving Ms. Qayumi. As you sit here 8 today, would you classify the encounter between the 9 visiting Duke student and the gentlemen we've been 10 speaking about as a gang rape? 11 A. It's not my place to define those things. 12 Q. When you spoke with Mr. Ekstrand were you 13 defining any of these encounters as a gang rape? 14 A. I believe I would have mostly used the word 15 "assault." 16 Q. As you sit here today, do you believe that 17 the encounter between this visiting student and the 18 male students that we've been discussing, would you 19 characterize that as an assault? 20 A. I would. 21 Q. On what basis? 22 A. On the basis that -- the basis that it was 23 not a normal set of circumstances for any student other 24 than these three engaging in, and these three students 25 were suspected of having engaged in this on a fairly</p>

<p style="text-align: right;">Page 54</p> <p>1 regular basis and that this was not -- Ariana was not 2 the only woman who was suspected to not get consent. 3 And it was not a normal course of activity for two men 4 to walk into another dorm room unannounced while two 5 people are already having sex. 6 Q. You said "unannounced." Do you know if 7 there was any interactions between the persons who were 8 in the room on the one hand and Mr. Self and Mr. Jones 9 on the other hand? 10 A. I know that physically when they walked 11 into the room it's not like the door was open for them. 12 The door had been unlocked, they walked in, and the 13 door was locked behind them. 14 Q. Do you know anything else about that -- 15 about whether there was communications? 16 A. I do not. 17 Q. And I asked you about the -- 18 A. And I did not -- just to be clear, I did 19 not allege that in my report. I did not allege that I 20 was in the room. I did not allege that I knew exactly 21 the -- 22 Q. Understood. I asked you about the phrase 23 "gang rape" and you said you would characterize it as 24 an assault. And I asked you if you would define what 25 happened on the -- in the incident involving the</p>	<p style="text-align: right;">Page 55</p> <p>1 visiting student as an assault, and you referenced 2 Ms. Qayumi. I want to make sure that we're clear that 3 we're only talking about the visiting student incident 4 right now. 5 Is there any basis besides what you've told 6 me that wouldn't be normal? Is there any other basis 7 for you to characterize that visiting student encounter 8 as an assault? 9 A. Could you rephrase that question. 10 Q. Yeah, sure. Let's stick with what's the 11 basis for your characterizing this incident involving 12 the visiting student as an assault without referring to 13 Ms. Qayumi? 14 A. I never alleged -- I don't know whether 15 consent was or was not given on a firsthand basis. It 16 would seem to me to be an extremely extenuating set of 17 circumstances that consent was given because this was 18 in the normal course of behavior for Duke students at 19 the time, not something that would fit within any 20 number of standard deviations of normal behavior. 21 Q. Anything else? 22 A. The fact that two men had -- again, I 23 didn't see any text messages -- walked into the room 24 and just commenced sexual activity. 25 Q. As this was happening during the evening</p>
<p style="text-align: right;">Page 56</p> <p>1 when this visiting student was involved, did you at 2 that time suspect that a non-consensual sexual 3 encounter was happening? 4 A. When the two men walked into the room, I 5 did. 6 Q. Did you do anything to intervene? 7 A. I did not. 8 Q. At any point did the young woman come out 9 of the room? 10 A. She did not. We had gone back downstairs 11 after being up there. 12 Q. Did you make any report to an RA while this 13 was happening? 14 A. I did not. 15 Q. Did you ask any questions of anyone to 16 determine whether the woman was impaired? 17 A. Of whom would I have asked the questions? 18 Q. I don't know. 19 A. I mean, obviously I discussed it with the 20 two friends that I was with. But other than that, no. 21 Q. Did you and your two friends discuss 22 contacting Duke police? 23 A. We did. 24 Q. Did you contact Duke police? 25 A. We did not.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Why not? 2 A. We were 18 -- or at least I was 18. I 3 don't know how old they were at the time. And my 4 judgment was not as good at 18 as I believe it is 5 today. 6 Q. Was the fact that you had been drinking, 7 did that play into account? 8 A. I don't believe so. 9 Q. So you believe that a non-consensual sexual 10 encounter was occurring. Did you do anything else 11 after reaching that conclusion to try and prevent or 12 stop the situation? 13 A. We did not. 14 Q. Did you ever speak with Mr. Leachman about 15 this incident after it occurred? 16 A. I did not. 17 Q. Did you ever speak with Mr. Self about this 18 incident after it occurred? 19 A. I did not. 20 Q. Same question for Mr. Jones. 21 A. I did not. 22 Q. Let me know if you need a break. I'm happy 23 to keep trudging along. On January 3rd, 2016 when you 24 first exchanged text messages or received a text 25 message from Mr. Ekstrand, had you hired a lawyer at</p>

<p>1 this point?</p> <p>2 A. I retained Mr. Ginsberg.</p> <p>3 Q. And that's what that first text message</p> <p>4 refers to is your counsel, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And you were not a Duke student at this</p> <p>7 time; is that right?</p> <p>8 A. In 2016 I was not a -- no. I was still a</p> <p>9 Duke student at that time.</p> <p>10 Q. Had you left and then come back?</p> <p>11 A. I did, and then I left again.</p> <p>12 Q. What were the circumstances of your first</p> <p>13 departure from Duke?</p> <p>14 A. Academic.</p> <p>15 Q. What were the circumstances of your second</p> <p>16 departure from Duke?</p> <p>17 A. Academic and health.</p> <p>18 Q. Back in 2014 when you first met with</p> <p>19 Mr. Ekstrand, did he share with you any draft legal</p> <p>20 documents, any complaints, proposed pleadings or</p> <p>21 anything of that nature?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Did he show you any documents?</p> <p>24 A. Not that I recall.</p> <p>25 Q. Did he play you any recordings or present</p>	<p>Page 58</p> <p>1 you with any other materials?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Did he share with you any information about</p> <p>4 potential claims that Ms. Qayumi was considering filing</p> <p>5 against Duke?</p> <p>6 A. I believe so.</p> <p>7 Q. What do you remember about them?</p> <p>8 A. I believe he mentioned that she would be</p> <p>9 pushing forward with the charges of some nature against</p> <p>10 Duke.</p> <p>11 Q. Do you remember any discussion of Title IX?</p> <p>12 A. Vaguely.</p> <p>13 Q. What do you remember about that?</p> <p>14 A. That Title IX was mentioned as a basis for</p> <p>15 the complaint.</p> <p>16 Q. Do you remember any other potential</p> <p>17 theories being discussed at that point?</p> <p>18 A. Theories as to?</p> <p>19 Q. Theories as to legal claims to pursue</p> <p>20 against Duke University.</p> <p>21 A. That's not my business. I don't recall</p> <p>22 that. There may have been. I wasn't pursued in</p> <p>23 letting him know that I filed a report.</p> <p>24 Q. Right. And I just want to know if you</p> <p>25 discussed any additional claims that Ms. Qayumi made</p>
<p>Page 60</p> <p>1 against Duke during that meeting.</p> <p>2 A. It's possible.</p> <p>3 Q. Are you able to recall any?</p> <p>4 A. I do not.</p> <p>5 Q. Did you all discuss Peter Lange during</p> <p>6 those meetings?</p> <p>7 A. We may have. I don't recall speaking about</p> <p>8 him.</p> <p>9 Q. On April 3rd, 2016, you responded to or you</p> <p>10 texted Mr. Ekstrand, "Hey, Bob, I'm running a couple of</p> <p>11 minutes late but should be there shortly." Did you</p> <p>12 meet with Mr. Ekstrand on April 3rd, 2016?</p> <p>13 A. By the looks of that text message I did.</p> <p>14 Q. Was Mr. Ginsberg present for that meeting?</p> <p>15 A. I don't believe he was.</p> <p>16 Q. Were you a Duke student in April of 2016?</p> <p>17 A. I was.</p> <p>18 Q. Are you able to recall any specific details</p> <p>19 about that meeting with Mr. Ekstrand?</p> <p>20 A. I believe we may have gone over what he had</p> <p>21 in mind for the deposition. I believe that</p> <p>22 Mr. Ginsberg had advised me that it was fine to just</p> <p>23 meet with him to go over the details of the deposition.</p> <p>24 Q. I just want to make sure you don't disclose</p> <p>25 what you and Kevin talked about.</p>	<p>Page 61</p> <p>1 A. Okay. And I believe that meeting was for</p> <p>2 the purpose of going over the declaration -- the</p> <p>3 affidavit.</p> <p>4 Q. Earlier you said you -- you said during</p> <p>5 that meeting you discussed what he had in mind for the</p> <p>6 deposition. You meant declaration?</p> <p>7 A. Exactly.</p> <p>8 Q. Did he share with you a proposed</p> <p>9 declaration during that meeting?</p> <p>10 A. I don't remember if it was a proposal or a</p> <p>11 sketch at some point, but there was some sort of</p> <p>12 structure.</p> <p>13 Q. Did you all discuss the purpose that, that</p> <p>14 declaration served in this case?</p> <p>15 A. Yes.</p> <p>16 Q. What was that purpose?</p> <p>17 A. The purpose was to be submitted as part of</p> <p>18 the evidence or the filing.</p> <p>19 Q. Did you ultimately -- strike that. Did you</p> <p>20 express any reservations during this April 2016 meeting</p> <p>21 about signing a declaration?</p> <p>22 A. About the general notion of signing one, I</p> <p>23 did not without making sure that it was meticulously</p> <p>24 worded to be exactly true, yes.</p> <p>25 Q. And you left that meeting without signing</p>

<p>1 the declaration?</p> <p>2 A. I don't recall if it had been completely</p> <p>3 put together or if there were just some slight edits</p> <p>4 that needed to be made. It wasn't ready for me to sign</p> <p>5 it.</p> <p>6 Q. Did you communicate with Mr. Ekstrand or</p> <p>7 anyone from his office between April 3rd, 2016, and</p> <p>8 November 4th, 2016?</p> <p>9 A. It's very possible.</p> <p>10 Q. Is this text exchange that you've got in</p> <p>11 front of you, is that the entirety of your text</p> <p>12 communications with Mr. Ekstrand?</p> <p>13 A. It is.</p> <p>14 Q. Do you recall specifically speaking on the</p> <p>15 phone with Mr. Ekstrand or anyone from his office</p> <p>16 between these two text exchanges?</p> <p>17 A. I would imagine I probably spoke on the</p> <p>18 phone with Mr. Ekstrand.</p> <p>19 Q. Do you recall the nature of any of those</p> <p>20 communications?</p> <p>21 A. Usually just updates to the declaration and</p> <p>22 things he needed from me.</p> <p>23 Q. Did you exchange drafts of any</p> <p>24 declarations?</p> <p>25 A. I have the draft of the declaration there.</p>	<p>Page 62</p> <p>Page 63</p> <p>1 By the time I went to go sit down with Mr. Ginsberg to</p> <p>2 just discuss the edits that needed to be made, he had</p> <p>3 moved firms.</p> <p>4 Q. Mr. Ginsberg had moved firms?</p> <p>5 A. That's correct.</p> <p>6 Q. So edits were being made to an original</p> <p>7 document -- to a prior version of a declaration during</p> <p>8 this time?</p> <p>9 A. Yes. I believe the declaration very much</p> <p>10 resembled what was submitted.</p> <p>11 Q. Did you receive multiple drafts of the</p> <p>12 declaration during this process?</p> <p>13 A. Just the one.</p> <p>14 Q. Do you know if Mr. Ginsberg received</p> <p>15 multiple drafts of the declaration?</p> <p>16 A. I do not know.</p> <p>17 Q. Then there's a November or a -- strike</p> <p>18 that. There's a May 5, 2017, text message from</p> <p>19 Mr. Ekstrand to you. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. What was the nature of your voicemail to</p> <p>22 Mr. Ekstrand on this day?</p> <p>23 A. The nature of the voicemail was that I was</p> <p>24 getting the cost service from this place of business,</p> <p>25 and that after discussing it with Mr. Ginsberg, his</p>
<p>Page 64</p> <p>1 firm was representing another party in the case. One</p> <p>2 of his partners, I believe, was representing another</p> <p>3 party in the case so he would no longer be able to</p> <p>4 represent me, and the representation he had referred me</p> <p>5 to I could not afford.</p> <p>6 Q. The representation --</p> <p>7 A. Mr. Ginsberg had referred me to I could not</p> <p>8 afford.</p> <p>9 Q. Did you ask Mr. Ekstrand for</p> <p>10 recommendations for a new lawyer who you could retain?</p> <p>11 A. That is correct.</p> <p>12 Q. And Mr. Ekstrand provided you Mr. Bachman's</p> <p>13 name?</p> <p>14 A. Mr. Bachman contacted me first.</p> <p>15 Q. So I just want to make sure that's clear.</p> <p>16 Yes or no, did Mr. Ekstrand provide you with</p> <p>17 Mr. Bachman's name?</p> <p>18 A. He may have. I don't -- he never said call</p> <p>19 this gentleman specifically.</p> <p>20 Q. Did he provide you with a few options?</p> <p>21 A. He said he was speaking to a couple of</p> <p>22 different people. And I don't remember which names</p> <p>23 were or were not specifically mentioned.</p> <p>24 Q. Okay. Do you remember anything else about</p> <p>25 the conversation with Mr. Ekstrand in May of 2017?</p>	<p>Page 65</p> <p>1 A. I do not. We discussed the fact I was at</p> <p>2 some point going to be deposed, and clearly I was being</p> <p>3 asked for documents. We were at a point of discovery</p> <p>4 in the case.</p> <p>5 (Deposition Exhibit 21 was marked for</p> <p>6 identification as of this date.)</p> <p>7 A. Can we take three minutes?</p> <p>8 Q. That's fine.</p> <p>9 (Whereupon a break was taken from</p> <p>10 10:47 a.m. to 10:53 a.m.)</p> <p>11 (BY MR. JACKSON)</p> <p>12 Q. Before we went off the record I handed you</p> <p>13 an exhibit that was a cover e-mail with an attached</p> <p>14 declaration at the top. Before we get to that I just</p> <p>15 want to ask you one quick question about the text</p> <p>16 message exchange.</p> <p>17 A. Yes, sir.</p> <p>18 Q. The November 4, 2016, text from</p> <p>19 Mr. Ekstrand to you has a document -- it appears to</p> <p>20 have a document attached to a declaration. Do you see</p> <p>21 that?</p> <p>22 A. I do.</p> <p>23 Q. Is that the same version of the document</p> <p>24 that Mr. Ekstrand sent to you by e-mail?</p> <p>25 A. I believe it to be.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. Excuse me. Previously had sent to you via 2 e-mail on September 2nd, 2016. Is that the same draft? 3 A. I believe it to be. 4 Q. The e-mail document that I had handed to 5 you indicates that you had called Mr. Ekstrand on 6 September 2nd, 2016. Do you see that? "Eli, thanks so 7 much for your call today." 8 A. Yes. 9 Q. Do you recall the nature of that 10 conversation? 11 A. It would have been to review the 12 declaration or to receive the declaration from him via 13 e-mail. 14 Q. And then there is a draft declaration 15 attached to this e-mail; is that right? 16 A. That's correct. 17 Q. And, as you sit here today, you've not 18 signed this declaration, right? 19 A. No. There were minor edits I wanted to 20 make. 21 Q. Are there still edits? 22 A. Very minor in nature that don't change most 23 of the substantive. 24 Q. Did you call Mr. Ekstrand after receiving 25 the declaration that was attached to this e-mail?</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Can you restate the question. 2 Q. Did you call Mr. Ekstrand close in time to 3 the time when you received this draft statement? 4 A. In reference to -- 5 Q. In reference to the declaration. 6 A. I don't believe so. Next time I'll keep a 7 call log. 8 Q. This visiting student incident that we were 9 discussing earlier, do you have an understanding as to 10 whether that was before or after the encounter 11 involving Ms. Qayumi? 12 A. Now or the time when it happened? 13 Q. As you sit here today. 14 A. As I sit here today, my understanding is 15 that the incident occurred afterwards. 16 Q. And, as you sit here today, you don't know 17 the identity of that visiting student? 18 A. I do not. 19 Q. And you don't know the identity of the Duke 20 student -- this visiting student -- who was on campus; 21 is that right? 22 A. I do not. You can narrow it down to about 23 however many females were in the dorm. 24 Q. After learning about the incident involving 25 Ms. Qayumi, did you make any efforts to determine the</p>
<p style="text-align: right;">Page 68</p> <p>1 identity of the visiting student? 2 A. I did not. 3 Q. Did you reach out to the Duke student who 4 the visiting student was seeing? 5 A. I did not. 6 Q. Did you take any steps to determine the 7 identity of the visiting student? 8 A. I did not. It's not my place to come 9 forward for her. 10 Q. As you sit here today, do you believe that 11 the visiting student was under the influence of any 12 drugs that are commonly referred to as date rape drugs 13 on the night in question? 14 A. It's not my place to speculate. 15 Q. As you sit here today, do you believe that 16 Ms. Qayumi was under the influence of any drugs that is 17 commonly referred to as the date rape drug on the night 18 of her incident? 19 A. It's not my place to speculate. 20 Q. Do you know if anyone -- any other Duke 21 student made any attempt to intervene on the night of 22 the encounter involving the visiting student? 23 A. To the extent to my knowledge, no. 24 Q. Have you ever spoken with the gentleman I 25 mentioned earlier Dillan Gamerut about the night of the</p>	<p style="text-align: right;">Page 69</p> <p>1 incident involving the visiting student? 2 A. I don't believe I have. He was a friend of 3 mine at the time. I've seen him several times since 4 then. But until today, as you mentioned his name, I 5 have no further reason he was involved in this case 6 whatsoever. 7 Q. How did you first meet Dean Christine 8 Pesetski? 9 A. I had met her a week earlier for a 10 completely unrelated exchange. 11 Q. Was that unrelated exchange in relation to 12 a disciplinary incident? 13 MR. BACHMAN: You can answer. 14 THE WITNESS: It was. 15 (BY MR. JACKSON) 16 Q. Was that incident involving you personally? 17 A. It was. 18 Q. Were you found responsible for any 19 violation of Duke's student conduct policy? 20 A. I don't remember if it was considered a 21 violation of policy. 22 Q. There was a report that you had struck 23 another student; is that right? 24 A. "Struck" is a harsh term for it. 25 Q. There was a report that you had made</p>

<p style="text-align: right;">Page 70</p> <p>1 non-consensual contact using your fist to another male 2 student; is that right? 3 A. Yes, sure. 4 Q. Was that at a Friends of Israel meeting? 5 A. Yes, it was. 6 Q. And describe for me the nature of your 7 first interaction with Christine Pesetski. 8 A. It was very cordial. I seemed somewhat 9 shocked that somebody had filed a report. If you've 10 never kind of lightly jabbed a friend in the top of the 11 arm I would be very surprised by that, and it wasn't 12 meant anything by it. It wasn't done particularly 13 forcefully, and I wasn't a particularly strong 14 gentleman at the time. 15 So that's why I was kind of -- thought it 16 was a little farcical that I was being called in on it. 17 I believe it was cordial. I don't know if she 18 approached it being farcical, but she could have 19 realized that there was not any sort of gravity to it 20 whatsoever. We had a short meeting. That was that. 21 Q. And that meeting was before the visiting 22 student incident, correct? 23 A. By roughly a week, yes. 24 Q. And you went to see Dean Pesetski the day 25 after or later depending on if we're in the early</p>	<p style="text-align: right;">Page 71</p> <p>1 morning hours. But this exchange with the visiting 2 student began on April 9th. You saw Dean Pesetski on 3 April 10th? 4 A. I saw her on April 11th, which would have 5 been that Monday. 6 Q. So it was a day removed from the -- 7 A. So the incident happened early Sunday 8 morning which would have been Sunday the 10th, and then 9 I saw her on Monday afternoon the 11th. 10 Q. Understood. 11 A. The fact that, that meeting with Dean 12 Pesetski I called fortuitous that I had that 13 extraordinarily minor incident the week before because 14 it meant that I knew exactly who to speak to about 15 this. 16 Q. Was the last document that I gave you 22? 17 A. Twenty-one, I believe. 18 (Deposition Exhibit 22 was marked for 19 identification as of this date.) 20 Q. I'll hand you what I'm marking as 21 Exhibit 22. Do you recognize this e-mail exchange? 22 A. I do. 23 Q. If you turn to the second page of this 24 document at the top e-mail there, do you see where it 25 says on April 10th, 2011, at 5:56 p.m., Eli Kozin</p>
<p style="text-align: right;">Page 72</p> <p>1 wrote? 2 A. Yes. 3 Q. Is that an e-mail from you to Dean 4 Pesetski? 5 A. It is. 6 Q. And so you e-mailed Dean Pesetski in the 7 evening of Sunday, April 10th; is that right? 8 A. That's correct. 9 Q. And the purpose of this -- of your 10 requesting the meeting was what? 11 A. Was to discuss the incident that had 12 happened early that Sunday morning. 13 Q. And you did, in fact, meet with Dean 14 Pesetski the next day on Monday, correct? 15 A. That's correct. 16 Q. You didn't provide a victim name at that 17 time, correct? 18 A. I did not. If I may, my purpose in having 19 that meeting was twofold. It was, one, as I had 20 mentioned, when I reentered my room that the sheets had 21 been messed up. It was -- you know, covered my basis 22 situation as well as -- like I had spoken earlier about 23 the critical mass of rumors and now having seen a very 24 similar incident firsthand, to say that I didn't want 25 to continue pretending that it seemed like everything</p>	<p style="text-align: right;">Page 73</p> <p>1 was okay. It had reached a point where I didn't think 2 something right was happening. 3 I saw some things that were wrong were 4 happening, but, as I stated, I was not in the room at 5 the time where any of these situations took place. 6 There was a pattern of events. It was distressing. It 7 was disturbing. It continues to be distressing and 8 disturbing -- this pattern of events. And I didn't 9 want to pretend that everything was right. 10 Q. So to the first purpose, you were concerned 11 that -- well, strike that. Why don't you just tell me 12 what your specific concern was in relation to -- let me 13 back up. You wanted to speak with Dean Pesetski to 14 memorialize with her the fact that you were not in the 15 room when this sexual encounter occurred; is that 16 right? 17 A. I wouldn't use more -- yes, to establish 18 that. 19 Q. You wanted to speak with someone at Duke 20 involving the conduct process to establish that, yes, 21 my DNA would be on my bed because I sleep there but I 22 had nothing to do with this? 23 A. While I was of the very strong feeling that 24 improper conduct was occurring, like I said, I wasn't 25 in the room. I would not be able to directly accuse --</p>

<p style="text-align: right;">Page 74</p> <p>1 cannot directly accuse any of the gentlemen who are 2 being alleged to have perpetuated the assaults. And I 3 believe I alluded to this earlier, that to me was -- if 4 one of the women were to come forward, that's their 5 place. It's not my place to come forward for them. 6 But, yes, as far as it refers to my bed, 7 should that woman have come forward and should an 8 investigation had ensued, it was, yes, to protect my 9 whereabouts at the time and to explain any DNA that 10 would have come off of my bed is obviously including my 11 DNA. 12 Q. So as of April 2011, you didn't have a 13 basis for accusing Colby Leachman, Brian Self, or Frank 14 Jones of a crime having occurred on the weekend of 15 April 9th, and April 10th, correct? 16 MR. EKSTRAND: Objection. It calls 17 for a legal conclusion about what crimes entailed in 18 the way of proof and facts. 19 THE WITNESS: I can answer? 20 MR. BACHMAN: You can answer. 21 THE WITNESS: I had a basis for 22 suspecting. I did not have a basis for accusing. 23 That's why my meeting was not to accuse them. 24 (BY MR. JACKSON) 25 Q. And during that meeting with Dean Pesetski</p>	<p style="text-align: right;">Page 75</p> <p>1 you did not accuse those three men of any crimes, 2 correct? 3 A. Directly I did not accuse them of any 4 crimes. 5 Q. And you didn't tell Dean Pesetski that any 6 of these three men had engaged in a non-consensual 7 sexual encounter with this visiting student, correct? 8 A. I suspected that they had, but I let her 9 know that. I'm unaware of how Duke either at the time 10 or in present day handles sexual assault claims. I'm 11 unaware of what the laws are. I do know that once 12 something is reported, there are theoretically certain 13 requirements. I wasn't sure what met the threshold. 14 All I wanted to do was, again, say this doesn't all 15 seem proper. 16 Q. So I just want to make sure I understand 17 your answer. You said that you told Dean Pesetski that 18 you were concerned or suspected. What did you tell her 19 that you -- as close as you can, tell me what your 20 words were to Dean Pesetski. 21 A. That I had -- the meeting was actually 22 conducted -- a lot of hypotheticals. Again, I didn't 23 know -- I was somewhat fearful at the time, again, 24 because of the whole -- my bed and my DNA. So we made 25 a lot of hypotheticals. Hypothetically if I witnessed</p>
<p style="text-align: right;">Page 76</p> <p>1 this, hypothetically if I witnessed that. It was 2 conducted under the very, very implicit assumption that 3 she very clearly understood that based on her responses 4 that we were discussing actual events. 5 And based on her responses we were very 6 clearly both discussing actual events that had occurred 7 with specific times, places, and people. And she was 8 aware of those times, places, and people. She 9 understood where I was coming from as wanting to make 10 sure that I was not going to be held responsible for 11 any of my roommates' actions that had -- and that the 12 suspicion that this was going from something within the 13 bounds of normality to something outside the bounds of 14 normality happened after I had already been removed 15 from the room when the other two gentlemen entered and 16 that this was part of a pattern of behavior. 17 She was made aware at the time that this 18 was part of a pattern of behavior. Had she not been 19 made aware of that already, I had informed her. 20 Q. So you relayed specifically to Dean 21 Pesetski that you had left the room and hadn't 22 witnessed any portion of the encounter that was -- 23 A. We had heard. 24 Q. I'm sorry? 25 A. We had heard portions of the encounter.</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. I want to make sure we're not speaking over 2 each other and I get a full question asked. Did you 3 relay to Dean Pesetski that you did not witness 4 visually any portion of this encounter that you were 5 concerned about? 6 A. That's correct. 7 Q. Did you relay to Dean Pesetski that you 8 heard any portion of the encounter that you felt was 9 concerning? 10 A. I did. 11 Q. What did you tell her about that? 12 A. I told her that I had heard those three 13 gentlemen in the room and sounds of sexual interaction. 14 Q. Did you use these three men's names? 15 A. I do not recall. 16 Q. Do you recall whether you used these three 17 men's names at any point during this conversation? 18 A. I do not recall. 19 Q. So you went to Dean Pesetski and you told 20 her that you were concerned -- strike that. You 21 mentioned discussion in terms of hypotheticals. Can 22 you tell me how that was conducted, how did you present 23 this set of facts to Dean Pesetski? 24 A. It was essentially the same story I told 25 that it was very much hypothetically Saturday night</p>

<p style="text-align: right;">Page 78</p> <p>1 this happened and this happened and this happened to 2 the point where, again, it was extraordinarily implicit 3 that we weren't discussing hypotheticals. Again, I was 4 a freshman and somewhat fearful at the time. 5 Q. But you didn't provide her a victim name 6 because you didn't have a victim name? 7 A. No, I did not. 8 Q. And you can't recall whether you provided 9 her with any accused student name? 10 A. She was clearly aware of the student. I 11 don't remember if I had provided their relationship to 12 administrators at the school or their names, but she 13 was clearly aware -- we were clearly talking about the 14 same students who she was clearly aware of which 15 student I was referring to. 16 Q. And your basis for saying that she was 17 clearly aware is what? 18 A. Was an exchange we had at the end of the 19 meeting. 20 Q. Which is? 21 A. And this is going to be not quite verbatim 22 but fairly close. After telling her everything I knew, 23 she said here's what we're going to do. We're going to 24 open a case and close it immediately, and if anything 25 corroborates we're going to give you a call. And my</p>	<p style="text-align: right;">Page 79</p> <p>1 response to her was if you give me a call, we've got 2 much bigger problems because of who the accused 3 students were or one of the accused students was. 4 Q. Did you explain what you meant by -- 5 A. By that point she was aware of what I 6 meant. 7 Q. Did you explain to her what you meant by if 8 we -- we'll have much bigger problems because of the 9 identity? 10 A. I didn't give an explanation. At the time 11 she understood that it meant that one of the women had 12 come forward -- would have come forward should she have 13 given me a call. Again, we were discussing a pattern 14 of behavior. And I had framed my description to her 15 the events of that early Sunday morning within that 16 pattern of behavior. 17 Q. Did you explain to Dean Pesetski what you 18 meant by if another woman comes forward we're going to 19 have much bigger problems? 20 A. I didn't say that. I said if you give me a 21 call, we have much bigger problems. 22 Q. Did you explain explicitly what you meant 23 by that statement? 24 A. I did not. 25 Q. Did you mention Peter Lange during this</p>
<p style="text-align: right;">Page 80</p> <p>1 conversation? 2 A. I may have. I don't recall explicitly 3 mentioning his name. I may have also referred to him 4 as the provost if I referred to him. 5 Q. Do you recall one way or another whether 6 you referred to the provost in this conversation? 7 A. I remember that we had established at least 8 Colby's identity. 9 Q. How? 10 A. I don't recall if it was either through use 11 of his name, through use of the provost, through the 12 use of Peter Lange, the stepson of the provost, the 13 stepson of Peter Lange. I do remember that we had 14 explicitly established his identity. 15 Q. And the way that you did that was? 16 A. I don't recall how, but by the end of the 17 exchange of the end of the conversation I knew that we 18 were talking about the same person. I cannot recall 19 exactly how I established it, but it had been 20 established during the course of the meeting. 21 Q. Your belief and recollection is that Dean 22 Pesetski said words to the effect of, "I will open a 23 case and then immediately close it"? 24 A. That's correct. 25 Q. Is it your recollection whether -- or do</p>	<p style="text-align: right;">Page 81</p> <p>1 you recall whether she told you how she was going to go 2 about opening the case? 3 A. No. 4 Q. Do you have any understanding as to how a 5 case would be opened without a victim name, for 6 example? 7 A. I do not. 8 Q. Do you have any understanding as to how a 9 case might be opened without an accused student's name? 10 A. I do not. 11 Q. Do you have any understanding as to Duke's 12 internal reporting policies? 13 A. I do not. 14 Q. Have you ever investigated that subject? 15 A. Occasionally perhaps, but never in any 16 depth. 17 Q. Based on that casual investigation do you 18 have any understanding as to the -- did you reach any 19 conclusions of your own? 20 A. I did not. There's not much information 21 available on their internal -- or at least at the time 22 there was not. 23 Q. Did you tell Dean Pesetski during this 24 meeting that you believed that fellow students had 25 engaged in a non-consensual sexual act with a visiting</p>

<p>1 student?</p> <p>2 A. I'm sorry?</p> <p>3 Q. Did you tell Dean Pesetski during this</p> <p>4 meeting that certain Duke male students had subjected a</p> <p>5 female -- a young woman to a non-consensual sexual act?</p> <p>6 A. I told her that I suspected that. Exactly.</p> <p>7 Q. Was that in the form of a hypothetical or</p> <p>8 was that in the form of an actual thing that you told</p> <p>9 her happened?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you have the e-mail with the draft</p> <p>12 declaration attached to it?</p> <p>13 A. I do. 21?</p> <p>14 Q. Yes. Actually, before we get to that, have</p> <p>15 you spoken to Dean Pesetski since that one -- or since</p> <p>16 that last meeting?</p> <p>17 A. I believe we have. I know I was on at</p> <p>18 least one committee with her at some point, but nothing</p> <p>19 else relating to this case.</p> <p>20 Q. Had your personal -- whatever we call it,</p> <p>21 your personal matter arising from the Friends of Israel</p> <p>22 meeting, had it concluded by the time you went to speak</p> <p>23 with Dean Pesetski about this incident?</p> <p>24 A. I don't recall if there was an essay that</p> <p>25 was required to be submitted. I don't recall if that</p>	<p>Page 82</p> <p>Page 83</p> <p>1 was before or after. I would venture to guess after,</p> <p>2 but I don't recall.</p> <p>3 Q. If you go to paragraph ten in this</p> <p>4 declaration, it reads, "I was also concerned that what</p> <p>5 I observed was consistent with reports of a pattern of</p> <p>6 sexual misconduct involving Leachman, Self, and Jones."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. The reports there, who are those reports</p> <p>10 made by?</p> <p>11 A. By reports I think we're alluding to the</p> <p>12 rumor mill. And by rumor mill, don't mistake me for</p> <p>13 thinking this was one or two. This was a constant</p> <p>14 source of conversation for many months at that point</p> <p>15 among students in the dorm and other students on</p> <p>16 campus.</p> <p>17 Q. Not what you had firsthand knowledge of,</p> <p>18 correct?</p> <p>19 A. Usually in sexual activities, only the</p> <p>20 people involved in that would have firsthand knowledge</p> <p>21 of it. I saw what I saw the night outside the room,</p> <p>22 and until then I had only heard things. And the night</p> <p>23 that I actually saw something with my own eyes is the</p> <p>24 day I came forward. I still didn't have enough</p> <p>25 evidence to make an accusation, but I had enough to</p>
<p>Page 84</p> <p>1 know that things didn't seem right to me.</p> <p>2 Q. Paragraph 12 -- and I'm asking these</p> <p>3 questions about this declaration understanding that you</p> <p>4 haven't signed this. You haven't sworn to this under</p> <p>5 penalty of perjury. I'm asking about the current draft</p> <p>6 of the declaration.</p> <p>7 A. Okay.</p> <p>8 Q. In paragraph 12 there's a reference to</p> <p>9 questions from Dean Pesetski, the final clause, and "I</p> <p>10 answered all of her questions." Do you remember what</p> <p>11 questions Dean Pesetski asked you?</p> <p>12 A. I don't. That was one of the parts that I</p> <p>13 wanted to clarify in that draft. Had she required any</p> <p>14 clarification from me, I would have provided it and</p> <p>15 been cooperative at the time.</p> <p>16 Q. In that same paragraph above, it reads, "I</p> <p>17 reported my knowledge of reports of similar events</p> <p>18 involving Leachman, Self, and Jones." Did you report</p> <p>19 knowledge of reports of similar events involving</p> <p>20 Leachman, Self, and Jones to Dean Pesetski?</p> <p>21 A. Yes. This incident would have been framed</p> <p>22 as that pattern of behavior.</p> <p>23 Q. Was that framing provided in the form of a</p> <p>24 hypothetical?</p> <p>25 A. I do not recall. I do not recall.</p>	<p>Page 85</p> <p>1 Q. You don't know one way or another?</p> <p>2 A. I do not.</p> <p>3 Q. You said earlier that you don't recall</p> <p>4 whether you used the name Colby Leachman or whether you</p> <p>5 said Peter Lange's stepson or the provost's stepson.</p> <p>6 Was there any way during this meeting with Dean</p> <p>7 Pesetski that you identified Brian Self?</p> <p>8 A. I do not recall.</p> <p>9 Q. You don't know whether you ever used Brian</p> <p>10 Self's name with Dean Pesetski?</p> <p>11 A. That is correct.</p> <p>12 Q. And because Brian Self is not identifiable</p> <p>13 through relationship to any faculty or administrator at</p> <p>14 Duke, there was no way for you to identify him that</p> <p>15 way, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. So you don't know -- and what about Frank</p> <p>18 Jones? Did you ever identify Frank Jones by name?</p> <p>19 A. I do not recall.</p> <p>20 Q. Do you know if you ever identified Frank</p> <p>21 Jones through any other identifying information?</p> <p>22 A. I do not recall other than the two -- their</p> <p>23 relationship to Colby within this pattern of events.</p> <p>24 Q. Which is?</p> <p>25 A. Which is that the rumor had been -- it's</p>

<p style="text-align: right;">Page 86</p> <p>1 very possible -- I don't want to swear under penalty of 2 perjury that I did identify the two of them, but if we 3 were discussing three students in a pattern of events, 4 I would imagine at some point I did. But, again, under 5 penalty of perjury I can't swear to it as far as 6 recalling that I did use their names other than Colby 7 who in some way, shape, or form I will swear that I did 8 identify him.</p> <p>9 Q. Paragraph 15 in this declaration says, "I 10 told Dean Pesetski that I could have easily found out 11 her name at the time I made my report." You said 12 earlier you presented this scenario in terms of a 13 hypothetical. How did you -- in light of that framing, 14 how would you have presented this statement to Dean 15 Pesetski if you did make this statement?</p> <p>16 A. That was a major edit that I wished to make 17 to the draft.</p> <p>18 Q. What is -- as you read it, what's not 19 factually correct about paragraph 15?</p> <p>20 A. I don't recall having told her I could have 21 easily found out the student's name. At this time and 22 place I don't recall which student was hosting the 23 visiting student. Two days after or a day after the 24 incident I likely still did recall, but I don't 25 remember having provided that willingness to provide a</p>	<p style="text-align: right;">Page 87</p> <p>1 name.</p> <p>2 Dean Pesetski, from what I do recall, 3 didn't seem to want too much information. She didn't 4 want to know too many names of the other people who had 5 witnessed it or were hosting the student.</p> <p>6 Q. Did that concern you at the time?</p> <p>7 A. Should have more.</p> <p>8 Q. Did it concern you at the time?</p> <p>9 A. Possibly vaguely. Not in any 10 substantiative at all.</p> <p>11 Q. Paragraph 16 -- is there anything that you 12 would change about that paragraph 16?</p> <p>13 A. I don't know if I explicitly told Dean 14 Pesetski I was willing to participate. Clearly, by 15 coming forward I was willing to share what I knew as 16 far as the pattern of events.</p> <p>17 So that first sentence is more or less 18 fine. Dean Pesetski assured me that I could be -- I 19 know Leachman was identified having six years after the 20 fact not wanting to swear under oath if I ever called 21 Jones or Self. Leachman or associates might be a more 22 fitting way for me to swear that or something of that 23 nature.</p> <p>24 Q. You said, as you sit here today, it's your 25 understanding that Ms. Qayumi's incident occurred</p>
<p style="text-align: right;">Page 88</p> <p>1 before the visiting student incident, correct?</p> <p>2 A. As I sit here today.</p> <p>3 Q. And so do you agree that -- well, strike 4 that. As you sit here today, do you believe that Dean 5 Pesetski should have taken some further action in 6 connection with the conversation that you had with her 7 on April 11th?</p> <p>8 A. Yes.</p> <p>9 Q. What action do you believe that Dean 10 Pesetski should have taken?</p> <p>11 A. Seeing this was a report that had an 12 extremely similar set of circumstances to a firsthand 13 accusation from a victim and involving the same 14 students, I believe that at some point when that report 15 was filed, additional details should have been asked 16 and they should have been contacted in some way, shape, 17 or form.</p> <p>18 I am not a Title IX lawyer. I'm not a 19 lawyer. I don't know the details of that. But I 20 imagine that as part of any sort of investigation, a 21 report of this nature should be -- the student should 22 at least be contacted for what he says.</p> <p>23 Q. So you believe that Duke should have 24 contacted you to advise you that a charge had been made 25 against the fellow student?</p>	<p style="text-align: right;">Page 89</p> <p>1 A. I don't need to know the details of why 2 they need more details, but I can't imagine that what I 3 provided them would be able to have been sufficient. 4 It was sufficient enough to warrant further discussion 5 with me but not sufficient on its own to involve in a 6 separate complaint. Was that clear? I'm sorry.</p> <p>7 Q. I mean, it's -- I don't know. It's as 8 clear as you stated it. If you want to further 9 explain, you're welcome to.</p> <p>10 A. So the detail that I provided would not -- 11 and I don't -- this is outside of my professional 12 field. I don't think would have been enough to involve 13 in a separate complaint or a separate investigation of 14 a separate complaint, but there were enough details 15 that had matched that I should have been asked for 16 further details. At the time I would have had a much 17 fresher recollection, and now we're sitting here six 18 years later when a lot has happened in six years.</p> <p>19 Q. The details that matched were what?</p> <p>20 A. Were -- and this was why, again, I cannot 21 swear under oath that I identified Brian or Frank, but 22 I believe I did because it was three students and it 23 was the same three. And I had talked about a pattern 24 of events with three students, and it would be hard for 25 me to imagine that there wouldn't have been some push</p>

<p style="text-align: right;">Page 90</p> <p>1 to at least identify who those students were in my 2 report from Dean Pesetski as well as having three 3 students and one female in something, whether it was 4 consensual, would be questioned.</p> <p>5 Q. Who questioned the consensual nature of the 6 visiting student encounter?</p> <p>7 A. I did.</p> <p>8 Q. Anyone else?</p> <p>9 A. In what capacity?</p> <p>10 Q. In terms of a report to Duke.</p> <p>11 A. Not that I am aware of.</p> <p>12 Q. So if Dean Pesetski had taken every step 13 that you believe she should have in connection with 14 what you told her, even if she had done all of that, 15 those actions by Dean Pesetski in response to your 16 report would not have prevented the incident involving 17 Ariana Qayumi and the timing of those two incidents, 18 correct?</p> <p>19 A. I don't think that's for me to speculate. 20 If this incident was afterwards -- you can't go back in 21 time, but that's not for me to speculate.</p> <p>22 MR. EKSTRAND: For the record, I'll 23 object to that question as utterly irrelevant actually.</p> <p>24 MR. JACKSON: If that's not relevant 25 to any claim that's being asserted as a Title IX, I'm</p>	<p style="text-align: right;">Page 91</p> <p>1 happy to stipulate to that.</p> <p>2 MR. BACHMAN: Find me that proof.</p> <p>3 (BY MR. JACKSON)</p> <p>4 Q. Mr. Kozin, those are all the questions I 5 have right now. There may be others around the table.</p> <p>6 CROSS-EXAMINATION BY</p> <p>7 MR. BACHMAN:</p> <p>8 Q. Mr. Kozin, let me just ask you, have you 9 authorized Christine Pesetski to release the contents 10 of your disciplinary record?</p> <p>11 A. I did not.</p> <p>12 Q. Have you authorized the release of the 13 contents of any of your academic records to anybody?</p> <p>14 A. Far and away, no.</p> <p>15 Q. That's all the questions I have.</p> <p>16 MR. EKSTRAND: Can we take a 17 five-minute break so I can collect my thoughts and do 18 this quicker than I would otherwise.</p> <p>19 (Whereupon a break was taken from 20 11:27 a.m. to 11:34 a.m.)</p> <p>21 RECROSS-EXAMINATION BY</p> <p>22 MR. EKSTRAND:</p> <p>23 Q. For the record, I'm Bob Ekstrand. I 24 represent Ariana Qayumi in this case. Eli, I have a 25 few questions I wanted to clarify, if we could. You</p>
<p style="text-align: right;">Page 92</p> <p>1 were asked a number of times in different ways whether 2 or not you accused or charged or -- various forms of a 3 report of sexual events or an assault, and you 4 explained that you didn't know the law of the land and 5 the student policies and all of that.</p> <p>6 So what I want to do is ask you whether or 7 not you reported some of the things that I think are 8 relevant to that. So if you actually would look at the 9 affidavit that is marked as Exhibit 21, it says in 10 paragraph 12 on page two, "During my meeting with Dean 11 Pesetski I reported the foregoing to Dean Pesetski." 12 And that refers to paragraphs three through 11 13 essentially?</p> <p>14 A. Okay.</p> <p>15 MR. JACKSON: Objection.</p> <p>16 (BY MR. EKSTRAND)</p> <p>17 Q. Is three through 11 a fair and accurate 18 description of what you reported to Dean Pesetski?</p> <p>19 A. Well, he is the son of Lori Leachman. I 20 don't know -- I don't recall six years later if that 21 fact was, in fact, part of our conversation. Paragraph 22 five, she was receiving assistance walking and standing 23 upright from Colby. I did not see her attempt to do 24 that on her own. Those are not the words I would have 25 written myself, but I would attest to those.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Hang on one second. Let me take you back 2 to paragraph four.</p> <p>3 A. Okay.</p> <p>4 Q. The one thing I want to make sure that's 5 true, first of all, is that this young woman was with 6 Colby Leachman who had brought her to your dorm and 7 that at that point her condition had changed 8 dramatically from the time you saw her earlier?</p> <p>9 A. Yes, that is true.</p> <p>10 Q. In paragraph number five she was clearly 11 impaired?</p> <p>12 A. I would attest to that.</p> <p>13 Q. She had glassy eyes when you saw her later 14 in the evening with Colby?</p> <p>15 A. Yes, that was true.</p> <p>16 Q. She was unsteady on her feet?</p> <p>17 A. That was true.</p> <p>18 Q. And she swayed when she stood?</p> <p>19 A. She was -- I remember Colby kind of 20 gripping her. I don't -- like, I did not see her 21 attempt to walk on her own.</p> <p>22 Q. So, in other words, Colby was essentially 23 helping her walk?</p> <p>24 MR. JACKSON: Objection.</p> <p>25 MR. EKSTRAND: What's the objection?</p>

<p style="text-align: right;">Page 94</p> <p>1 MR. JACKSON: He just said he didn't 2 know if she was trying to walk on her own and you 3 restated -- you re-characterized this -- 4 THE WITNESS: Colby was assisting her 5 walking. I don't know what the effects were had she 6 attempted to walk on her own. 7 MR. EKSTRAND: I think he was 8 testifying that she was -- 9 MR. JACKSON: You don't need to 10 explain. You asked me -- I didn't make a speaking 11 objection. You asked me to explain the nature of my 12 objection. 13 MR. EKSTRAND: Right. And, for the 14 record, I'm clarifying that the basis of your objection 15 was misunderstanding what the witness testified to. 16 MR. JACKSON: I don't think either of 17 us is testifying here so it doesn't matter what either 18 of us says. You asked me to clarify my objection and I 19 did. 20 MR. EKSTRAND: Are you going to do 21 this a lot or are we going to -- 22 MR. JACKSON: If someone asks for the 23 basis for my objection I will explain it to you. 24 Otherwise, I will limit my objections to objection. 25 MR. EKSTRAND: You're going to need to</p>	<p style="text-align: right;">Page 95</p> <p>1 state your basis. 2 MR. JACKSON: Form. 3 (BY MR. EKSTRAND) 4 Q. Number six -- paragraph six. Let me stop 5 right there. Did you convey those things that we've 6 just described to Dean Pesetski in your meeting? 7 A. From what I recall, I did. 8 Q. Paragraph six, Leachman indicated to you 9 that he needed the exclusive use of your room for a 10 while and that from your prior experience that meant he 11 intended to have some kind of sexual interaction with 12 the young woman and wanted you to stay out of the room? 13 A. That is correct. 14 Q. Did you report that to Dean Pesetski? 15 A. One way or another. 16 MR. JACKSON: Objection. 17 THE WITNESS: Yes. Again, probably 18 not in those words. I may have used "sex tiles." That 19 was a phrase that was common at the time. You know, a 20 text message essentially saying I would like to have 21 exclusive use of the room for purposes of sexual 22 activity, that is correct, which is not the first time 23 that had happened in our room or any dorm room, for 24 that matter. 25 Q. Paragraph seven, Leachman steered the young</p>
<p style="text-align: right;">Page 96</p> <p>1 woman into your room and closed the door and they 2 remained inside. Is that true? 3 A. That is true. 4 Q. Did you inform Dean Pesetski of that fact? 5 A. I did. 6 Q. Roughly 45 minutes later two of Leachman's 7 friends Brian Self and Frank Jones appeared on our hall 8 and entered the room while Leachman and the young woman 9 were still inside. Is that true? 10 A. Roughly 45 minutes. Yes, that is true. 11 Q. And did you report that to Dean Pesetski? 12 A. I did. 13 Q. Paragraph eight says Self and Jones did not 14 knock before they entered the room. 15 A. That is true. 16 Q. Did you report that to Dean Pesetski? 17 A. I did. I found that extraordinarily odd at 18 the time. Not odd but suspicious. 19 Q. And go ahead and explain why. 20 A. It's not often that you see other men 21 entering a room where a man and a woman are already 22 engaged in a sexual activity. I stated before it was 23 outside the bounds of what was considered normal at the 24 time. 25 Q. And they closed the door behind them and</p>	<p style="text-align: right;">Page 97</p> <p>1 remained in the room. Is that true? 2 A. We went back downstairs. To the best of my 3 knowledge, they remained in the room. We were upstairs 4 for a couple of minutes and all three were being -- we 5 could hear the sounds of all three. I don't know for 6 how long they stayed in the room but, yes, they were in 7 the room for a period of time. 8 Q. And it says not long thereafter the 9 unmistakable sounds of sexual interaction were audible 10 from the hallway outside the door. 11 A. That is correct. 12 Q. And you heard that yourself? 13 A. That is correct. 14 Q. And you personally witnessed her condition 15 as they went into the room the first time? 16 A. That is correct. 17 Q. And her condition was clearly impaired? 18 A. I would characterize it that way. 19 Q. Now, you've been asked again and again 20 whether or not you had personal knowledge of the young 21 woman giving consent to any of this going on in the 22 room. Let me ask you a slightly different question. 23 Are you aware that to give consent one has to have the 24 capacity to consent? 25 MR. JACKSON: Objection.</p>


<p style="text-align: right;">Page 98</p> <p>1 THE WITNESS: I'm aware that that is 2 the definition of consent that one has to be capable of 3 giving consent. I am also aware that at the time that 4 wasn't always followed on college campuses -- 5 especially that college campus. And that's why my 6 suspensions were not too highly roused when it was 7 simply Colby and the student in the room, just to 8 explain why I didn't do anything. 9 (BY MR. EKSTRAND) 10 Q. Now, do you think that she was in any 11 condition to drive a car? 12 A. Hell, no. Sorry. Pardon my French. She 13 was clearly in no -- I would not -- no. 14 Q. Did you get the sense that she was fully 15 aware of even her surroundings? 16 MR. JACKSON: Objection. 17 THE WITNESS: I'm not sure I would be 18 qualified to make that judgment. Different people may 19 take different levels of acuity through different 20 things. 21 (BY MR. EKSTRAND) 22 Q. Did you have any suspicion or sense that 23 rather than alcohol, her capacity may have been induced 24 by a drug? 25 A. At the time, not a large suspicion. Of</p>	<p style="text-align: right;">Page 99</p> <p>1 course, when I had spoken about the rumors on campus, 2 that was always mentioned. But that was the most 3 unsubstantiated part of all the rumors. And even today 4 I don't know, but there's plenty of -- specifically a 5 date rape drug, no, but either plenty of alcohol or 6 some other sort of accelerant. That's honestly -- 7 that's not my place to testify to. 8 Q. Sure. All right. You mentioned you had 9 two friends with you at the time you observed the two 10 men going in? 11 A. That's correct. 12 Q. And you all heard sounds of sexual 13 intercourse -- 14 A. That's correct. 15 Q. -- involving all four, is that right, or 16 all three of the men? 17 A. Three of the men and -- what's odd is I 18 don't remember hearing the female student or any sort 19 of noise that seemed to have been emitted from a 20 female. 21 Q. At all? 22 A. We were not listening for a very long time, 23 but during the short span we were, I don't not recall 24 having heard any sound attributed to a female. 25 Q. Now, how long after they went into the room</p>
<p style="text-align: right;">Page 100</p> <p>1 did you go -- I'm sorry. How long after the two 2 gentlemen went into the room did you go listen or did 3 you begin to hear noises? 4 A. I believe there were two separate 5 incidents. It was right when they first started, we 6 went back downstairs and came back up to see if 7 everything was finished and I could go to bed. It was, 8 again -- I would say, again, roughly 45 minutes later. 9 Q. But the first time did you hear noises 10 immediately after they went into the room or soon after 11 they went into the room? 12 A. Soon after. 13 Q. And you did not hear the young woman saying 14 anything when you listened? 15 A. Not that I recall. 16 Q. Did Dean Pesetski ever ask you any details 17 about whether the woman was heard saying anything? 18 A. She did not. 19 Q. And did she ask you of any details at all 20 about what occurred? 21 A. She asked me very few details. 22 Q. You were asked a number of times whether or 23 not you said the name Colby Leachman, Brian Self, and 24 Frank Jones. Did Ms. Pesetski ever insist that you 25 convey the names of any of those people if you somehow</p>	<p style="text-align: right;">Page 101</p> <p>1 were not perfectly clear for your hypothetical? 2 A. I might have had a much better opportunity 3 of recalling the answer to that question in 2011 or 4 2014. In 2017, unfortunately, I cannot recall the 5 answer to that question. I've fought in two wars. 6 It's been six years. 7 Q. Now, did you refer to Mr. Leachman in your 8 conversations with Dean Pesetski as your roommate? 9 A. Yes. 10 Q. Obviously you're talking about somebody 11 going into your room? 12 A. That's correct. 13 Q. How many roommates did you have? 14 A. Just the one. 15 Q. Who was that? 16 A. Colby Leachman. 17 Q. Is that public knowledge on campus? 18 A. I would imagine so. 19 Q. Dean Pesetski, did she -- 20 A. She had access to student records. Sorry 21 to talk over you. 22 Q. That's fine. 23 A. And there was a clear -- and, again, I 24 don't recall how we got to the understanding. There 25 was a clear understanding that he was connected to the</p>

<p style="text-align: right;">Page 102</p> <p>1 administration -- the personnel. Whether or not I used 2 his name, I don't remember how we got to that 3 understanding, but we had to reach that at some point 4 during our conversation.</p> <p>5 Q. All right. So essentially she knew during 6 the conversation that this was Colby Leachman and that 7 was the provost's son?</p> <p>8 MR. JACKSON: Objection. 9 (BY MR. EKSTRAND)</p> <p>10 Q. To your understanding.</p> <p>11 A. To my understanding, they were discussing 12 the provost's son my roommate. I don't know if she was 13 aware of his name at the point. I don't have record of 14 whether the two had met or interacted.</p> <p>15 Q. Was it pretty well-known that he was the 16 provost's son amongst folks at Duke at that time?</p> <p>17 MR. JACKSON: Objection.</p> <p>18 THE WITNESS: Stepson, and at least in 19 the dorm, yes, it was fairly well-known. There was not 20 anything that was being hidden. I will say that many 21 of the students in finance banking-related fields, 22 economy, or just taking economics, she was the 23 professor of one of the large economics lectures. And 24 so other students were aware of the relationship 25 through having his mother as their professor.</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. In that capacity as the professor of 2 economics for students who want to have financial 3 careers, do you think that that would raise any concern 4 with people?</p> <p>5 A. It's not for me to say.</p> <p>6 MR. JACKSON: Objection. 7 (BY MR. EKSTRAND)</p> <p>8 Q. Are you aware of any time that Provost 9 Lange recused himself from any involvement in any of 10 the investigations or any communications about any 11 investigation involving his son?</p> <p>12 A. I am unaware. I was unaware any 13 investigation had even occurred until after the -- from 14 my understanding of the timeline today had even 15 occurred. I believe I was first made aware of the 16 investigation in 2014 which, I believe, the 17 investigation was closed before that.</p> <p>18 Q. Now, you mentioned that there were many, 19 many rumors involving Colby engaging in an activity 20 that sounds like sexual misconduct and that they were 21 pretty widespread. Did he ever express to you any 22 dismay, disappointment, concern about these rumors 23 about him?</p> <p>24 MR. JACKSON: Objection. 25 THE WITNESS: He did not. We barely</p>
<p style="text-align: right;">Page 104</p> <p>1 spoke. 2 (BY MR. EKSTRAND)</p> <p>3 Q. I want to read something to you and just 4 have you tell me if this sounds like what you saw. In 5 other words, does this sound like the same incident to 6 you.</p> <p>7 A. Okay.</p> <p>8 Q. "This incident involved an unknown woman 9 who had shown up at South Gate apparently very 10 intoxicated an unaware of her location. Three men took 11 her to a back area of the dorm and had sex with her. 12 The men were identified as Colby Leachman, Brian Self, 13 and Frank Jones." Does that sound like what you saw?</p> <p>14 MR. JACKSON: Objection.</p> <p>15 THE WITNESS: With the difference 16 that, first, she had arrived with Colby and later the 17 two men entered. And I don't know if that area of the 18 dorm is referring to the fact that it was a U-shaped 19 building. It was kind of over a courtyard, and this 20 was in a dorm room.</p> <p>21 (BY MR. EKSTRAND)</p> <p>22 Q. So the back area of the dorm is different 23 than what you saw; is that right?</p> <p>24 A. They were in a dorm room; that is correct. 25 Unless the back area of the dorm -- I don't know what</p>	<p style="text-align: right;">Page 105</p> <p>1 that refers to specifically.</p> <p>2 Q. And three men took her to the back area. 3 That's different?</p> <p>4 A. That's different as well.</p> <p>5 Q. And, in addition, one of the men went down 6 the hallway soliciting other men to have sex with the 7 woman?</p> <p>8 A. I don't recall having that occurred in this 9 case.</p> <p>10 Q. And there were men who took up the offer?</p> <p>11 A. As far as I'm aware, that did not happen in 12 this case.</p> <p>13 Q. So essentially does that sound like the 14 same thing that you reported or different?</p> <p>15 MR. JACKSON: Objection.</p> <p>16 THE WITNESS: It sounds fairly 17 different to me.</p> <p>18 (BY MR. EKSTRAND)</p> <p>19 Q. Did anybody ever ask you -- anybody from 20 Duke ever call you and say, Eli, let me ask you if 21 these things are what you saw?</p> <p>22 A. No.</p> <p>23 Q. In fact, did anybody from Duke ever contact 24 you after you made your report to Dean Pesetski about 25 your report?</p>

<p style="text-align: right;">Page 106</p> <p>1 A. No.</p> <p>2 Q. Did the police ever search your room after</p> <p>3 you made the report to Dean Pesetski?</p> <p>4 A. I'm not aware of having been present for</p> <p>5 any search. And I don't recall if this happened before</p> <p>6 or after. I do recall at one point a police officer</p> <p>7 knocking on the door to the room when Colby was not</p> <p>8 there asking to speak with him. He was not there. I</p> <p>9 said, "Colby is not there." And the police officer</p> <p>10 said, "Okay. We'll get him another time." I was not</p> <p>11 present for any searches.</p> <p>12 Q. Did they ask you to search the room at that</p> <p>13 time?</p> <p>14 A. They did not.</p> <p>15 Q. Do you know if they were Duke police</p> <p>16 officers?</p> <p>17 A. I do not have this information, no. I was</p> <p>18 studying or doing whatever at the time.</p> <p>19 Q. So that officer did not ask you for consent</p> <p>20 to search the room?</p> <p>21 A. He did not.</p> <p>22 Q. And did you ever receive what would be</p> <p>23 called an inventory of a search pursuant to a --</p> <p>24 A. I did not. Am I allowed to ask a question?</p> <p>25 Q. Yeah.</p>	<p style="text-align: right;">Page 107</p> <p>1 A. Should I have been aware of a search? Was</p> <p>2 there a search of the room?</p> <p>3 Q. I'm not aware of one. I'll represent to</p> <p>4 you I don't --</p> <p>5 MR. JACKSON: We don't get to answer</p> <p>6 questions.</p> <p>7 THE WITNESS: I would love to know if</p> <p>8 my things were pilfered through because I did go</p> <p>9 missing a camera right around then -- a very expensive</p> <p>10 camera.</p> <p>11 (BY MR. EKSTRAND)</p> <p>12 Q. Around when?</p> <p>13 A. 2011.</p> <p>14 Q. After these events occurred?</p> <p>15 A. Yeah. I was packing my room at the end of</p> <p>16 the semester, and my expensive camera was not there.</p> <p>17 Q. When was the last time you remember using</p> <p>18 it?</p> <p>19 A. I could go look up the pictures. Sometime</p> <p>20 probably February or March of that spring.</p> <p>21 Q. Did you have it in your room? Did you keep</p> <p>22 it in your room?</p> <p>23 A. In my closet.</p> <p>24 Q. So it wasn't ever sitting out on a desk or</p> <p>25 --</p>
<p style="text-align: right;">Page 108</p> <p>1 A. No, it was always in my closet.</p> <p>2 Q. Did any other theft occur in your room</p> <p>3 other than that, that you're aware of?</p> <p>4 MR. JACKSON: Objection.</p> <p>5 THE WITNESS: Not that I'm aware of.</p> <p>6 MR. EKSTRAND: What's the basis?</p> <p>7 MR. JACKSON: The theft. What any</p> <p>8 other theft?</p> <p>9 MR. EKSTRAND: I'm assuming that it</p> <p>10 was stolen.</p> <p>11 MR. JACKSON: By whom? I mean, what's</p> <p>12 the -- the predicate for this is asking whether any</p> <p>13 search occurred. He's now suspecting that Duke police</p> <p>14 took his camera.</p> <p>15 THE WITNESS: I'm not suspecting. I</p> <p>16 barked up a lot of other trees.</p> <p>17 (BY MR. EKSTRAND)</p> <p>18 Q. I'm not suggesting that the police stole</p> <p>19 anything. I'm wondering if anybody else other than</p> <p>20 your roommate had easy access to your camera?</p> <p>21 A. I was always, having originally been from</p> <p>22 New York, wanted the door to be left locked at all</p> <p>23 times. That's always happened. When I left, Colby</p> <p>24 didn't always leave the room locked so, theoretically,</p> <p>25 other people could have access to the room.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Now, the video of the sexual assault of</p> <p>2 Ariana Qayumi, that was -- do you know whose phone that</p> <p>3 was on?</p> <p>4 MR. JACKSON: Objection.</p> <p>5 THE WITNESS: From firsthand, I do</p> <p>6 not.</p> <p>7 (BY MR. EKSTRAND)</p> <p>8 Q. Were part of the rumors that were</p> <p>9 circulating about Colby at Duke, did they involve him</p> <p>10 having videos of these encounters with impaired women?</p> <p>11 A. I strongly recall that the rumor of</p> <p>12 Ariana's encounter was on video. I don't recall if any</p> <p>13 other encounters were alleged to be on video.</p> <p>14 Q. Did Duke's Title IX coordinator ever</p> <p>15 contact you?</p> <p>16 A. No.</p> <p>17 Q. Just for the record, I want to be clear.</p> <p>18 The two gentlemen that came into the room and the</p> <p>19 incident that you witnessed -- the two men who came in</p> <p>20 late -- you knew who they were?</p> <p>21 A. That's correct.</p> <p>22 Q. And you just don't recall if you said to</p> <p>23 Dean Pesetski that was --</p> <p>24 A. That's correct.</p> <p>25 Q. -- Self and Jones? Do you recall Pesetski</p>

<p style="text-align: right;">Page 110</p> <p>1 being confused about who the other two were or asking 2 about who the other two were? 3 A. I don't recall her being confused about 4 anything. In fact, I recall her being very unconfused 5 about everything. 6 Q. Did you ever tell Dean Pesetski, I don't 7 want to reveal the identity of any of these people? 8 A. No. I did say I wasn't in the room. I 9 can't accuse -- you know, I can't come forward, and the 10 woman's name -- I can't accuse any of them. But this 11 is past the point of me pretending that everything is 12 okay. This all within the realm of normal behavior. 13 Q. But you did witness her condition prior to 14 entering the room? 15 A. That's correct. 16 Q. And she was clearly impaired when she 17 entered the room? 18 A. That's correct. 19 Q. When you listened to the unmistakable 20 sounds of sexual conduct in the room, you did not hear 21 any of her voice? 22 A. That's correct. 23 Q. Were any of the three young men involved 24 rumored to have access to or otherwise possess drugs of 25 any kind?</p>	<p style="text-align: right;">Page 111</p> <p>1 A. Of any kind? 2 Q. Um-hm. 3 A. I'm aware of that. 4 Q. What's that? 5 A. I'm aware that there was marijuana in their 6 possession. 7 Q. Generally or at the time? 8 A. In general. 9 Q. Were any of them -- 10 A. I'm sorry. Ivy League campus in the year 11 2011. There was marijuana in their possession. 12 Q. Fair enough. 13 A. Not Ivy League, but you get the point. 14 Q. Just to clarify, did Dean Pesetski ever ask 15 you to help her identify the victim? 16 A. She did not. 17 Q. You were with -- the two young men that you 18 were with, did they voice any reaction at the time to 19 what was happening that you recall? 20 A. They were as appalled as I was. 21 Q. Do you recall anything that they said in 22 particular at this time? 23 A. No. 24 Q. Did they say what specifically they were 25 appalled by?</p>
<p style="text-align: right;">Page 112</p> <p>1 MR. JACKSON: Objection. 2 THE WITNESS: Not that I recall 3 anything specific. 4 (BY MR. EKSTRAND) 5 Q. Just what you had all observed? 6 A. Yes, that's correct. 7 Q. You mentioned that Ariana had in passing 8 told you something about inappropriate conduct 9 involving Colby, perhaps the other two, in passing; is 10 that right? 11 A. That's correct. 12 Q. Could she have been referring to 13 inappropriate touching, verbal harassment, subsequent 14 behaviors that occurred after the -- 15 A. No, she was -- 16 MR. JACKSON: Objection. 17 THE WITNESS: She was referring to 18 something about an incident that had a lot of rumors 19 and had been videotaped. And, as far as I knew, there 20 was only one incident with her and these gentlemen 21 involving a videotape and lots of rumors. 22 (BY MR. EKSTRAND) 23 Q. So those were the points that she had made 24 in passing that -- 25 A. They were in reference to, yes.</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. That makes sense. All right. I think 2 that's all I have. 3 MR. JACKSON: I actually have more. 4 REDIRECT EXAMINATION BY 5 MR. JACKSON: 6 Q. Mr. Kozin, those are -- there's a statement 7 in paragraph 12 of the draft declaration that was 8 referred to a moment ago. "I reported the forgoing to 9 Dean Pesetski." And then there were questions in 10 paragraphs three through 11. As you sit here today, 11 you're not able to testify that you reported all of the 12 details of paragraphs three through 11 to Dean Pesetski 13 in April of 2011, are you? 14 MR. EKSTRAND: Objection. Asked and 15 answered. 16 THE WITNESS: I mean, there's, again, 17 minor edits I would wish to make, and then I can 18 testify that I did report those things. 19 (BY MR. JACKSON) 20 Q. You stand by your testimony that when you 21 spoke with Dean Pesetski you discussed the events 22 involving the visiting student in terms of a 23 hypothetical? 24 A. Most of the conversation I recall has been 25 conducted in the guise of a hypothetical under the</p>

<p style="text-align: right;">Page 114</p> <p>1 very, very clear understanding between the two of us 2 that we're talking about actual events. Again, at the 3 time, I did not wish to make any formal accusations 4 against the men. I only wished to protect myself and 5 document one incident and a pattern of behavior. A 6 pattern cannot be established without documentation of 7 separate incidents.</p> <p>8 Q. And you're not able to say whether you gave 9 the names of Brian Self and Frank Jones to Dean 10 Pesetski in April of 2011?</p> <p>11 A. As I sit here in 2017, I cannot. I believe 12 if I were to review notes of conversations I had, had 13 in 2014 -- what I remembered obviously in 2014 was not 14 the same as 2011, but it's half as close.</p> <p>15 Q. Do you have any notes to that effect?</p> <p>16 A. No. But I believe other members of counsel 17 in this room and Mr. Ginsberg may as well.</p> <p>18 Q. Have you reviewed any notes of that nature?</p> <p>19 A. I did not.</p> <p>20 Q. If Dean Pesetski were to say that in 21 April of 2011, she did not know that Colby Leachman had 22 a family relationship with any professor at Duke, do 23 you have any reason to dispute that?</p> <p>24 A. I would just laugh. I would find that 25 absurd and just laugh.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. If Dean Pesetski were to say that as of 2 April 2011, she had no reason to believe that Colby 3 Leachman had a family relationship with a professor at 4 Duke, would you have any reason to dispute that?</p> <p>5 A. I probably did not inform her that Colby 6 was this person and that person and this and that 7 person. I would find it very -- I have no firsthand 8 way of disputing it. I would find it hilarious though 9 if she were to maintain that.</p> <p>10 Q. If Dean Pesetski were to say that as of 11 April 2011, she didn't know that Colby Leachman had a 12 family relationship with any Duke administrator, would 13 you have any reason -- any basis for disputing that?</p> <p>14 A. I would say that under my least 15 understanding of what constitutes perjury, that's 16 probably perjury.</p> <p>17 Q. You would -- if Dean Pesetski were to say 18 that, you would accuse her of perjury?</p> <p>19 A. I would not accuse her of perjury. I would 20 just find it very hard to believe that she was not 21 aware. And if she was not aware on April 11th, by 22 April 13th or 14th, I would say she was most likely 23 very acutely aware.</p> <p>24 Q. Why?</p> <p>25 A. Because that's when I believe that the</p>
<p style="text-align: right;">Page 116</p> <p>1 report of Ariana was filed, as I sit here today, was 2 later on that week. And everybody on campus was aware 3 of who these people were.</p> <p>4 Q. "These people" meaning?</p> <p>5 A. Meaning Peter, Colby, and Lori.</p> <p>6 Q. As of April of 2011, you didn't know of any 7 victims being involved in the -- well, strike that. As 8 of April of 2011, you weren't aware of whether an 9 actual sexual assault had occurred on the evening of 10 April 9th into April 10th involving Colby Leachman, 11 Brian Self, and Frank Jones, correct?</p> <p>12 MR. EKSTRAND: Objection. He just 13 testified that a rape occurred. He can't consent -- 14 he's not capable of consent --</p> <p>15 MR. JACKSON: That was a totally 16 improper objection and, no, he didn't.</p> <p>17 (BY MR. JACKSON)</p> <p>18 Q. As of April 2011, when you came to speak 19 with Dean Pesetski, did you know whether a rape had 20 occurred in your dorm room?</p> <p>21 A. I was not in the room. I did not know what 22 consent was given or not given. I had a strong 23 suspicion based on my years, my eyes, and my logic, my 24 brain, that consent had likely been not given. And 25 even though I could not -- I was not raped. I was not</p>	<p style="text-align: right;">Page 117</p> <p>1 in the room. I cannot come forward and say, hey, this 2 happened. I was not there. The best I could do was 3 have my -- what I witnessed reported as a report so 4 that if that woman or any other woman were to come 5 forward or had come forward, I can raise my hand and 6 say I'm aware of the circumstances around these events 7 and what had happened. And what happened is a woman 8 had come forward.</p> <p>9 Q. And, to your knowledge, did Duke -- setting 10 aside your meeting with Dean Pesetski, did Duke 11 otherwise -- do you know if Duke otherwise learned 12 about this incident involving this visiting student?</p> <p>13 A. I have no idea.</p> <p>14 Q. Do you know if Duke investigated the 15 incident involving this visiting student?</p> <p>16 A. I have no idea.</p> <p>17 Q. Do you know if this visiting student ever 18 came forward to make a complaint?</p> <p>19 A. I have no idea.</p> <p>20 Q. Do you know if this visiting student was 21 ever identified?</p> <p>22 A. I have no idea.</p> <p>23 Q. Even if all of the statements in your 24 declaration are taken as true, you would agree with me 25 that you don't know the identity of this visiting</p>

<p style="text-align: right;">Page 118</p> <p>1 student?</p> <p>2 A. I do not.</p> <p>3 Q. That you never tried to find out?</p> <p>4 A. At the time I could have.</p> <p>5 Q. That you never tried to find out?</p> <p>6 A. Again, my report was not for the purpose of</p> <p>7 -- it was not my place to come forward with her name.</p> <p>8 It was not my place to come forward with her name.</p> <p>9 Q. You heard sounds from outside the room, but</p> <p>10 you don't have firsthand knowledge of what happened in</p> <p>11 the room?</p> <p>12 A. It was clearly sexual activity.</p> <p>13 Q. There were some references to you not</p> <p>14 hearing a woman's voice. How long did you stand</p> <p>15 outside the room and listen to what was happening in</p> <p>16 the room?</p> <p>17 A. A couple of minutes.</p> <p>18 Q. Are you -- did you believe that the woman</p> <p>19 was unconscious?</p> <p>20 A. To the best of my speculation, it would</p> <p>21 seem like it.</p> <p>22 Q. Do you have any basis for that speculation?</p> <p>23 MR. EKSTRAND: Objection.</p> <p>24 (BY MR. JACKSON)</p> <p>25 Q. Let me back up. Do you have any facts that</p>	<p style="text-align: right;">Page 119</p> <p>1 support a thought that the woman was unconscious?</p> <p>2 A. She was either unconscious or not making a</p> <p>3 lot of noise.</p> <p>4 Q. And you don't know which?</p> <p>5 A. Usually when something like that happens I</p> <p>6 would imagine at least some noise would be made.</p> <p>7 Q. You didn't intervene to stop this all from</p> <p>8 happening at the time?</p> <p>9 A. I did not.</p> <p>10 Q. You said the woman was in a changed state.</p> <p>11 Do you know what she did earlier that evening?</p> <p>12 A. I was not with her.</p> <p>13 Q. Do you know --</p> <p>14 A. I saw the before and the after picture.</p> <p>15 Q. Do you know one way or another whether she</p> <p>16 lacked capacity to give consent?</p> <p>17 A. She wasn't speaking very clearly and she</p> <p>18 wasn't walking very unassisted.</p> <p>19 Q. Do you know one way or another whether she</p> <p>20 lacked capacity to consent?</p> <p>21 A. It's not for me to -- it's not my place to</p> <p>22 say.</p> <p>23 Q. Did you try to find out on the evening of</p> <p>24 the event in question?</p> <p>25 A. I'm sorry. Can you rephrase the question.</p>
<p style="text-align: right;">Page 120</p> <p>1 Q. Yeah. Did you take any steps to determine</p> <p>2 whether this women was capable --</p> <p>3 A. I did not breathalyze her, no.</p> <p>4 Q. Did you take any other steps to engage her</p> <p>5 in conversation?</p> <p>6 A. No.</p> <p>7 Q. Ms. Qayumi's incident, you don't have any</p> <p>8 firsthand knowledge about that, correct?</p> <p>9 A. I do not.</p> <p>10 Q. Who's Duke's Title IX coordinator?</p> <p>11 A. I have no idea.</p> <p>12 Q. You mentioned fighting in two wars since</p> <p>13 all of this incident. Are you currently taking any</p> <p>14 medication that would affect your ability to give clear</p> <p>15 and honest testimony?</p> <p>16 A. I am not.</p> <p>17 Q. Those are all the questions I have.</p> <p>18 (Signature reserved.)</p> <p>19 (Deposition concluded at 12:11 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 121</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF NORTH CAROLINA)</p> <p>3 COUNTY OF WAKE)</p> <p>4</p> <p>5 I, Leslie Christian, the officer before whom</p> <p>6 the foregoing deposition was taken, do hereby certify</p> <p>7 that the witness whose testimony appears in the</p> <p>8 foregoing deposition was duly sworn by me; that the</p> <p>9 testimony of said witness was taken by me to the best</p> <p>10 of my ability and thereafter reduced to typewriting</p> <p>11 under my direction; that I am neither counsel for,</p> <p>12 related to, nor employed by any of the parties to the</p> <p>13 action in which this deposition was taken, and further</p> <p>14 that I am not a relative or employee of any attorney or</p> <p>15 counsel employed by the parties thereto, nor</p> <p>16 financially or otherwise interested in the outcome of</p> <p>17 the action.</p> <p>18 This the 29th day of June, 2017.</p> <p>19</p> <p>20 </p> <p>21</p> <p>22 LESLIE CHRISTIAN</p> <p>23 Notary Public in and for</p> <p>24 County of Wake</p> <p>25 State of North Carolina</p> <p>Notary Public No. 201221300088</p>

<p style="text-align: right;">Page 123</p> <p style="text-align: center;">WITNESS'S CERTIFICATE</p> <p>I, ELI KOZIN, do hereby certify that I have read and understand the foregoing transcript and believe it to be a true, accurate, and complete transcript of my testimony, subject to the attached list of changes, if any.</p> <p style="text-align: center;">_____ ELI KOZIN</p> <p>This deposition was signed in my presence by _____, on the ____ day of _____, 2017.</p> <p style="text-align: center;">_____ Notary Public</p> <p>My commission expires:</p>	<p style="text-align: right;">Page 124</p> <p>CaseWorks, Inc. 811 Ninth Street, Suite 260 Durham, North Carolina 27705 (Page 1 of 2)</p> <p style="text-align: center;">E R R A T A S H E E T</p> <p>Re: Ariana Qayumi v. Duke University Deposition of: ELI KOZIN</p> <p>Please read this transcript with care, and if you find any corrections or changes you wish made, list them by page and line number below. DO NOT WRITE IN THE TRANSCRIPT ITSELF. Return the Certificate and Errata Sheet to this office after it is signed. We would appreciate your prompt attention to this matter.</p> <p>To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to the errata sheet.</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p>
<p style="text-align: right;">Page 125</p> <p>(Page 2 of 2)</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p> <p>Page ____ Line ____ should read: _____</p>	

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